

RESOLUTION NO. 2009-42

RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF ROCKLIN  
APPROVING AND DIRECTING EXECUTION OF  
A FRANCHISE AGREEMENT FOR COLLECTION  
AND DISPOSAL OF SOLID WASTE  
(Auburn Placer Disposal Service)

WHEREAS, by adoption of Resolution No. 99-39, the City Council of the City of Rocklin extended the Franchise Agreement with Auburn Placer Disposal Service granting an exclusive franchise for the collection and disposal of solid waste within the corporate limits of the City; and

WHEREAS, the exclusive franchise took effect on April 1, 1979, and shall expire on March 31, 2009; and

WHEREAS, the City has determined that the franchisee has performed satisfactorily during the franchise term; and

WHEREAS, the franchisee has continued to partner with the City of Rocklin in developing new programs to improve their service; and

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939"), has declared that it is within the public interest to authorize and require local agencies to make adequate provisions for solid waste handling within their jurisdictions; and

WHEREAS, pursuant to California Public Resources Code Section 40059(a)(1), the City Council of the City Of Rocklin has determined that the public health, safety and well-being require that an exclusive franchise be awarded to a qualified solid waste enterprise for the collection and recovery of Solid Waste from certain residential, industrial and commercial areas in City; and

WHEREAS, Auburn Placer Disposal Service acknowledges that City is relying on Auburn Placer Disposal Service to materially assist in meeting the City's requirement of diverting fifty percent (50%) of the City's wastestream from disposal at a landfill, and Auburn Placer Disposal Service is aware of the need to recycle materials collected by Auburn Placer Disposal Service in such a manner as to qualify the City for diversion credit with the California Integrated Waste Management Board; and

WHEREAS, City and Auburn Placer Disposal Service are mindful of the provisions of the laws governing the safe collection, transport, recycling and disposal of Solid Waste, including AB 939, the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response, Compensation and Liability Act; and

WHEREAS, City has not and, by this Solid Waste Franchise Agreement will not, instruct Auburn Placer Disposal Service on its collection methods, nor supervise the collection of waste; and

WHEREAS, Auburn Placer Disposal Service has demonstrated during the term of the prior franchise agreement that it has the experience, responsibility and qualifications to arrange with residents, and commercial, industrial, institutional and other entities in the City for the collection and safe transport of solid waste to the materials recovery and disposal facilities designated herein, and in reliance thereon, the City Council determines and finds that the public interest, health, safety and well-being would be best served if Auburn Placer Disposal Service were to make independent arrangements with residents and other entities to perform these services; and

WHEREAS, the City Council declares its intention of maintaining reasonable rates for collection and transportation of solid waste within the City.

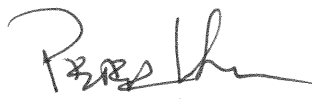
NOW, THEREFORE, BE IT RESOLVED BY the City Council of the City of Rocklin as follows:

Section 1. The City Manager is directed to conduct an operational audit of Auburn Placer Disposal's current performance under the existing franchise agreement.


Section 2. Provided the audit referenced in Section 1 above has been completed and compliance has been confirmed, the City Council of the City of Rocklin approves and directs the City Manager to execute a Solid Waste Franchise Agreement with Auburn Placer Disposal Service for the collection and disposal of solid waste within the corporate limits of the City of Rocklin, in the form attached hereto as Exhibit A and by this reference incorporated herein.

PASSED AND ADOPTED this 10th day of March, 2009, by the following roll call vote:

AYES:	Councilmembers:	Lund, Storey, Magnuson, Yuill, Hill
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None
ABSTAIN:	Councilmembers:	None

  
\_\_\_\_\_  
Peter Hill , Mayor

ATTEST:

  
\_\_\_\_\_  
Barbara Ivanusich, City Clerk

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EXHIBIT A

Solid Waste Franchise Agreement Between  
The City Of Rocklin, California And  
Auburn Placer Disposal Service, A California Corporation  
For The Collection, Transportation, And Disposal Of Solid Waste

**FRANCHISE AGREEMENT FOR**

**SOLID WASTE HANDLING SERVICES**

**BETWEEN THE CITY OF ROCKLIN AND**

**AUBURN PLACER DISPOSAL SERVICE**

**Effective as of April 1, 2009**

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This Solid Waste Franchise Agreement ("Agreement") is entered into this 10th day of March, 2009 between the City Of Rocklin, California ("City") and Auburn Placer Disposal Service, a California corporation (hereinafter referred to as "Contractor"), for the collection, transportation, and disposal of Solid Waste.

## RECITALS

WHEREAS, City and Contractor are parties to Prior Agreements (as defined below) governing the collection of Solid Waste in the City Of Rocklin; and

WHEREAS, City and Contractor wish to replace the Prior Agreements with this Agreement from and after the Commencement Date of this Agreement; and

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939"), has declared that it is within the public interest to authorize and require local agencies to make adequate provisions for Solid Waste handling within their jurisdictions; and

WHEREAS, pursuant to California Public Resources Code Section 40059(a)(1), the City Council of the City Of Rocklin has determined that the public health, safety and well-being require that an exclusive franchise be awarded to a qualified Solid Waste enterprise for the collection and recovery of Solid Waste from certain residential, industrial and commercial areas in City; and

WHEREAS, Contractor acknowledges that City is relying on Contractor to materially assist in meeting the City's requirement of diverting fifty percent (50%) of the City's Wastestream from disposal at a landfill, and Contractor is aware of the need to Recycle materials collected by Contractor in such a manner as to qualify the City for diversion credit with the California Integrated Waste Management Board ("CIWMB"); and

WHEREAS, City and Contractor are mindful of the provisions of the laws governing the safe collection, transport, Recycling and disposal of Solid Waste, including AB 939, the Resource Conservation and Recovery Act ("RCRA"), and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"); and

WHEREAS, City has not and, by this Agreement does not, instruct Contractor on its collection methods, nor supervise the collection of Waste; and

WHEREAS, Contractor has represented and warranted to City that it has the experience, responsibility and qualifications to arrange with residents, and commercial, industrial, institutional and other entities in the City for the collection and safe transport of Solid Waste to the materials recovery and disposal facilities designated herein, and in reliance thereon, the City Council determines and finds that the public interest, health, safety and well-being

would be best served if Contractor were to make independent arrangements with residents and other entities to perform these services; and

WHEREAS, the City Council declares its intention of maintaining reasonable rates for collection and transportation of Solid Waste within the City.

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**ARTICLE ONE - INTRODUCTORY PROVISIONS**

**1.1 DEFINITIONS**

Whenever any term used in this Agreement has been defined by the City of Rocklin Municipal Code or Division 30, Part 1, Chapter 2 of the California Public Resources Code ("PRC"), the definitions in the City of Rocklin Municipal Code or PRC shall apply unless the term is otherwise defined in this Agreement.<sup>1</sup>

AB 939. "AB 939" shall mean the California Integrated Waste Management Act of 1989, Public Resources Code section 40000 et seq., as it may be amended from time to time.

Affiliate. "Affiliate" means any of the Contractor's officers, directors or shareholders, and any corporation, partnership, joint venture or other entity directly or indirectly controlling the Contractor, or directly or indirectly owned or controlled by the Contractor or its officers, directors or shareholders.

Applicable Law. "Applicable Law" means all federal, state and local laws, regulations, rules, orders, judgments, degrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the collection and disposal of Solid Waste and Recyclable Materials, including Environmental Laws, that are in force on the Commencement Date and as they may be enacted, issued or amended during the Term of this Agreement.

Bulky Waste. "Bulky Waste" means large items of Solid Waste, such as appliances, furniture, large auto parts, trees, branches, stumps and other oversize Wastes. Bulky Waste does not include waste that has been placed in a bin or drop box.

Chlorofluorocarbon Containing Appliance. "Chlorofluorocarbon Containing Appliance" is any household or automotive device, such as refrigerators and air conditioning units that contain or did contain any chlorofluorocarbon-based refrigerant.

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<sup>1</sup> To the extent that definitions contained in the City Code conflict with definitions in the PRC, the former shall control and govern the rights and obligations of the parties hereunder; provided, however, that should the PRC's definitions be made obligatory by the state legislature on the City, then the conflicting PRC's definitions shall apply.



City Council. "City Council" means the City Council of the City of Rocklin.

City Manager. "City Manager" means the City Manager of the City of Rocklin or his or her designee.

CIWMB. "CIWMB" means the California Integrated Waste Management Board.

Collection Rates. "Collection Rates" means the rates charged by Contractor for providing the Solid Waste collection services described in Article Three, and include Franchise Fees. The Collection Rates shall be established in accordance with Article Four, Section 1 below.

Commencement Date. "Commencement Date" means April 1, 2009.

Contractor. "Contractor" shall mean Auburn-City Disposal Service, and shall also mean any approved assignee, transferee or successor in interest of said corporation.

City. "City" means the City of Rocklin, a municipal corporation.

Disposal Fees. "Disposal Fees" means the fees charged at the Materials Recovery Facility to receive Solid Waste from the Contractor.

Environmental Law. "Environmental Law" means all laws, regulations, rules, orders, judgments, degrees, permits, approvals, or other requirements of any governmental agency governing Solid Waste, Hazardous Waste or Hazardous Materials, including, without limitation, AB 939 and CERCLA, that are in force on the Commencement Date and as they may be enacted, issued or amended during the Term of this Agreement.

E-Waste. "E-Waste" is an equivalent term to Universal Waste as that term is defined below

Franchise Area. "Franchise Area" shall mean all area within the current boundaries of the City of Rocklin city limits, together with all areas added to the City by way of formal annexations of territory into the City.

Franchise Fee. "Franchise Fee" means the fee imposed by the City on Contractor pursuant to Article Four, Section 2 below solely because of its status as the exclusive Solid Waste collection franchisee under this Agreement, and which, among other things, is intended to compensate City for its expenses in administering this Agreement, Contractor's use of public streets and rights-of-way, and to fund other Solid Waste management activities.

Greenwaste. "Greenwaste" means organic material from trees, shrubs, grass and other vegetation. Green waste does not include plastic bags, bricks, rocks, gravel, large quantities of dirt, concrete, sod, non-organic wastes, loose fruits and vegetables, tree trunks, stumps, palm fronds, branches more than six inches in diameter or three feet in length, or pet waste.

Hazardous Waste or Materials. "Hazardous Waste" or "Hazardous Materials" means any and all of the following:

Wastes, materials or substances defined or characterized as Hazardous Waste by the Federal Solid Waste Disposal Act, as amended, including RCRA (42 U.S.C. Section 6901, et seq.) as amended from time to time, or regulations promulgated thereunder;

Waste, materials or substances defined or characterized from time to time as Hazardous Waste by the principal agencies of the State of California (including, without limitation, the Department of Health Services, the Department of Toxic Substances Control, the California Water Resources Control Board, and the CIWMB) having jurisdiction over Hazardous Waste generated by facilities within the State, and pursuant to any other applicable governmental regulations;

Wastes, materials or substances, the storage, treatment, transportation or disposal of which is subject to regulation under the Toxic Substances Control Act, 15 U.S.C. §2601-2654, as amended from time to time, or regulations promulgated thereunder;

Radioactive Wastes, materials, substances or items, the storage, treatment, transportation or disposal of which is subject to governmental regulations; and

Wastes, materials, substances or items that contain polychlorinated biphenyls.

The terms "Hazardous Waste" and "Hazardous Materials" will be construed to have the broader, more encompassing definition where a conflict exists in the definitions employed by two or more governmental entities having concurrent or overlapping jurisdiction over Hazardous Waste.

Household Hazardous Waste. "Household Hazardous Waste" or "HHW" means di minimis quantities of Hazardous Wastes generated by households and small businesses as part of the Wastestream, of the type and characteristics typically found in residential waste streams.

Landfill. "Landfill" means the Western Regional Sanitary Landfill, owned by the Western City Waste Management Authority.

Legal Holiday. "Legal Holiday" means the following Legal Holidays: Thanksgiving, Christmas, New Years Day and any other legal holiday observed by the Materials Recovery Facility.

Materials Recovery Facility. "Materials Recovery Facility" or "Facility" means the Western City Waste Management Authority Materials Recovery Facility, located at 3033 Fiddymont Rd. in Roseville, City, California.

Medical Waste. "Medical Waste" means Solid Waste or other materials, substances or items which may be reasonably considered infectious, pathological or biohazardous, originating from hospitals, public or private medical clinics, departments of research laboratories, pharmaceutical industries, blood banks, forensic medical departments, medical offices, mortuaries, veterinary facilities and other similar facilities, and includes, without limitation, equipment, instruments, utensils, fomites, laboratory Waste (including

pathological specimens and fomites attendant thereto), surgical facilities, equipment, bedding and utensils (including pathological specimens and disposal fomites attendant thereto), sharps (hypodermic needles, syringes, etc.), dialysis unit Waste, chemotherapeutic Waste, animal carcasses, offal and body parts, biological materials (vaccines, medicines, etc.), and other similar materials, but excluding any such Waste which is determined by evidence reasonably satisfactory to the Contractor to have been rendered non-infectious, non-pathological and non-biohazardous.

Multi-Family Units. "Multi-Family Units" shall mean a dwelling which includes two or more individual living units and which receives communal refuse and/or Recycling services.

Operating Year. The Operating Year under this Agreement shall begin on July 1 of each calendar year and end at midnight on June 30 of the following year.

Person. "Person" means any individual, corporation, partnership, joint venture, limited liability company, trust or other legal entity.

Prior Agreements. "Prior Agreements" means the City Franchise Agreement for Collection and Disposal of Solid Waste as amended.

Recyclables or Recyclable Material. "Recyclables" or "Recyclable Material" means discarded materials which could be reused or Processed, or are in the future reused or Processed into a form suitable for reuse through reprocessing or remanufacture, consistent with the requirements of AB 939. The terms "Recyclables" or "Recyclable Material" include Transformable and compostable materials. The terms "Recyclables" or "Recyclable Material" include paper, newsprint, printed matter, pasteboard, paper containers, cardboard, glass, aluminum, PET, HDPE, and other plastics, beverage containers, compostable materials, brick and stone in reusable size and condition, and such other materials reasonably designated as Recyclables by the City Council or the Director of Facility Services, or designated as Recyclables by the CIWMB, or other agency with jurisdiction.

Recycling and Recycled. "Recycling" and "Recycled" refers to Processing, cleansing, treating, and reconstituting materials that would otherwise become or remain Solid Waste, and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products or Biomass that qualifies for diversion credit by the CIWMB. "Recycling" also refers to the Processing and beneficial reuse of materials, to the extent that the beneficial reuse of these materials qualifies for diversion credit by the CIWMB. "Recycling" does not include "Transformation," which is defined in PRC section 40201.

Single-Family Unit. "Single-Family Unit" means a dwelling that receives individual refuse and/or Recycling services.

Solid Waste. "Solid Waste" or "Waste" means all putrescible and non-putrescible solid, semi-solid, and liquid Wastes, including residential, industrial, commercial and municipal garbage, trash, refuse, paper, rubbish, ashes, industrial Wastes, demolition and

construction Wastes, discarded home and industrial appliances, Recyclable Materials, manure, vegetable or animal solid and semi-solid Wastes, Source Separated Inert Materials, and other discarded solid and semi-solid Wastes; but excludes Hazardous Wastes, Special Wastes and Medical Wastes.

Solid Waste Program Manager. "Solid Waste Program Manager" means the City Manager or his or her designee.

Special Waste. "Special Waste" means any designated Wastes, as defined in 23 California Code of Regulations §2522, and special handling waste generated by industrial facilities or processes, but shall not include "Hazardous Waste" as defined herein. Special Wastes include: asbestos, sewage sludge, water treatment sludge, drilling muds, grease wastes, contaminated soils, shredder waste, agricultural wastes, filter cake/de-watered sludge, spent catalyst fines, refinery ash and by-products; except where any such Wastes are deemed to be Hazardous Waste.

Term. "Term" means the term described in Article One, Section 5 below.

Universal Waste. "Universal Waste" means electronics related waste including household batteries, mercury thermometers, fluorescent lamps and electronic devices including televisions and computer monitors, computers, printers, VCRs, cell phones, telephones, radios, portable DVD players with video screens, and microwave ovens; but does not include large appliances

Waste. "Waste" means "Solid Waste" as defined herein.

Wastestream. "Wastestream" means all Solid Waste collected by Contractor pursuant to this Agreement or delivered by any Person to the Materials Recovery Facility.

## **1.2 REPRESENTATIONS AND WARRANTIES OF CONTRACTOR**

Contractor hereby makes the following representations and warranties for the benefit of City as of the Commencement Date:

- A. Contractor is duly organized and validly existing as a corporation in good standing under the laws of the state of its incorporation and is qualified to do business in the State of California, with full legal right and power to enter into and perform its obligations under this Agreement.
- B. Contractor has full legal right, power, and authority to execute, deliver, and perform this Agreement, and has duly authorized the execution and delivery of this Agreement by all necessary and proper action by its Board of Directors and shareholders, as necessary.
- C. The Persons signing this Agreement on behalf of Contractor have been authorized by Contractor to do so, and this Agreement has been duly executed and delivered by Contractor in accordance with the authorization of its Board of Directors and shareholders,

as necessary, and constitutes a legal, valid and binding obligation of Contractor enforceable against Contractor in accordance with its terms.

D. Neither the execution and delivery by Contractor of this Agreement, nor the performance by Contractor of its obligations hereunder:

- (1) conflicts with, violates or will result in a violation of any existing Applicable Law;
- (2) conflicts with, violates or will result in a breach or default under any term or condition of any existing judgment, order or decree of any court, administrative agency or other governmental authority, or of any existing agreement or instrument to which either Contractor is a party, or by which either Contractor or any of its properties or assets is bound; or
- (3) will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of Contractor which will interfere materially with Contractor's performance hereunder.

E. There is no action, suit, proceeding or, to the best of Contractor's knowledge, investigation at law or equity, before or by any court or governmental entity, pending or threatened against Contractor or otherwise affecting Contractor, wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect Contractor's performance hereunder, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or which would have a material adverse effect on the financial condition of Contractor.

F. Contractor has sufficient financial resources to perform all aspects of its obligations hereunder.

G. Contractor has the expert, professional, and technical capability to perform all of its obligations under this Agreement.

H. Contractor has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding this Agreement and the work to be performed by Contractor under this Agreement, and enters into this Agreement on the basis of that independent investigation.

### **1.3 CONDITIONS PRECEDENT**

This Agreement shall not become effective and City shall not be obligated to perform the covenants and undertakings provided for in this Agreement unless and until each and all of the conditions set out below are satisfied by Contractor, or waived in writing by City. Waiver of any of the following as a condition to the effectiveness of this Agreement will not preclude City from pursuing any claim for breach of this Agreement. In the sole and absolute discretion of the City Manager, this Agreement shall expire and be of no further

force or effect, without the need for notice pursuant to this Agreement or otherwise, if the conditions precedent set forth below are not satisfied on or before March 30, 2009:

- A. The representations and warranties made by Contractor in Article One, Section 2 of this Agreement shall be true and correct;
- B. Contractor shall furnish City with satisfactory Certificate(s) of Insurance, completed and signed by Contractor's insurers, which clearly state the types and amounts of coverage required under this Agreement, the effective dates and expiration dates of the policies, and include all required endorsements; and
- C. Contractor shall deliver to City a Performance Bond or letter of credit as required by this Agreement.

#### **1.4 PRIOR AGREEMENTS**

The Prior Agreements shall remain in effect, and Contractor shall continue to collect, transfer, and dispose of Solid Waste in the Franchise Area pursuant to the Prior Agreements, until the Commencement Date. Notwithstanding any other provision of this Agreement or of the Prior Agreements, upon the Commencement Date, the Prior Agreements shall expire and be of no further force or effect, except that: (a) any provisions of the Prior Agreements which provide for either party to defend and/or indemnify the other party for acts, omissions or occurrences prior to the Commencement Date shall survive; (b) any provisions of the Prior Agreements which expressly state that they shall survive expiration of the term or termination of the Prior Agreements shall survive; and (c) any amounts owed by Contractor to City pursuant to the Prior Agreements, and amounts owed by City to Contractor pursuant to the Prior Agreements solely for unpaid collection bills, shall remain due and payable in accordance with the terms of the Prior Agreements. Notwithstanding the foregoing, the Prior Agreements shall not be terminated by this Section if this Agreement is terminated as a result of litigation challenging the award of this Agreement.

The "Agreement for Use of Western City Waste Management Authority Facilities" between Contractor and the Western City Waste Management Authority, dated August 4, 1994 (the "Flow Control Agreement"), is not a "Prior Agreement" as defined herein, and shall remain in full force and effect. Pursuant to the Flow Control Agreement, Contractor shall deliver all Solid Waste (including Recyclable Materials) it collects to the Materials Recovery Facility or such other facility or the Western Regional Sanitary Landfill, as the Authority directs. Any breach by Contractor of said Flow Control Agreement shall, at the City's discretion, be deemed a breach of this Agreement as well.

#### **1.5 TERM**

- A. Base Term of Agreement. The base term of this Agreement shall commence on the Commencement Date and terminate on March 31, 2019.

B. Automatic Extension. The term of this Agreement shall automatically extend for an additional five years, then terminating on March 31, 2024, unless Contractor is in material breach of the agreement upon the expiration of the base term, or one of the parties has requested termination of the Agreement prior to the automatic extension. To void the automatic extension, notice of termination of the Agreement must be provided in writing to the other party on or before 5:00 pm on November 1, 2018.

C. Optional Extension. The City and Contractor may extend the Agreement for no less than five, and up to ten years, by mutual consent in writing at least sixty days prior to the expiration date of the automatic extension. Contractor acknowledges that any such extension must be approved by the City Council to become effective.

D. No Prohibition On Amendments. Nothing herein shall be construed to prohibit amendments to Contractor's scope of work, at any time during the term of this Agreement or its authorized extensions, by mutual consent of the Parties.

## **ARTICLE TWO – FRANCHISE SCOPE, SERVICES AND PROGRAMS**

### **2.1 GRANT OF FRANCHISE**

A. Grant of Franchise. City grants to Contractor, for the term of and in accordance with this Agreement (including all extensions or renewals), the exclusive privilege and duty to make and enter into independent arrangements with residents of Single Family Units, residents and/or owners of Multi-Family Units and Persons in charge of commercial, industrial, institutional and other entities in the Franchise Area, for the collection, transportation and removal of Solid Waste to the Materials Recovery Facility, the Landfill and other sites as may hereafter be approved in writing by the City, generated and placed in an authorized Solid Waste container in the Franchise Area; provided, however, that said franchise shall be a non-exclusive franchise with respect to Recyclable Materials that meet all of the following requirements:

- (1) The Recyclable Materials must be generated by a commercial and/or industrial enterprise in the conduct of its own business; and
- (2) The generator of such Recyclable Materials must not be charged any fees, or must receive a net positive consideration, directly or indirectly, in connection with such Recyclable Materials, taking into account all amounts received by the generator in respect of such Recyclable Materials, as well as all amounts paid by the generator in respect of such Recyclable Materials, including, without limitation, hauling fees, equipment rental charges, management fees, logistics fees, and all other amounts, however denominated and to whomever paid; and
- (3) The Recyclable Materials must be separated from non-Recyclable Solid Waste, and held in an authorized container on an item-by-item basis, by the generator of such Recyclable Materials before transportation and disposal.

(4) The extent of this grant of franchise shall be subject to any limitations imposed by Applicable Law.

B. Sale or Donation of Recyclables. This Agreement is not intended to and does not affect or limit the right of any Person to sell, donate or give away any Recyclable Materials generated by such Person to any other Person (provided the generator does not pay a net consideration to the recipient of such materials for the collection, transportation, removal, resale, handling or processing of such Recyclable Materials) and further provided that all such Recyclable Materials are separated from Solid Waste by the generator.

C. Acceptance of Franchise. Contractor agrees to be bound by and comply with all the Solid Waste collection requirements of this Agreement. Contractor waives any right or claim to serve any part of the Franchise Area under any prior grant of franchise, contract, license or permit issued or granted by any governmental entity. Contractor shall pay the City the Franchise Fee, as provided in Article Four, Section 2, on all gross revenues collected by Contractor from Collection Rates generated by such entities and in such areas

D. Exceptions to Exclusivity. The exclusive privilege granted by this Agreement shall not apply where:

- (1) The owner or operator of a residential, commercial or industrial property engages a gardening, landscaping or tree trimming contractor as an incidental part of a comprehensive service offered by such contractor, rather than as a hauling service, for the removal and disposal or Recycling in accordance with Applicable Law of garden Waste generated at such property; or
- (2) A Person or entity has been given an exemption by City from any mandatory collection ordinance that City has or may adopt in the future; or
- (3) To any State agency or department, including but not limited to school districts.

E. Enforcement of Exclusivity of Franchise. The City may, in its sole discretion, enforce the exclusivity provisions of this franchise against third party violators, taking into account the cost of doing so and other factors. Contractor may independently enforce the exclusivity provision of this Agreement against third party violators, including but not limited to seeking injunctive relief, and the City shall use good faith efforts to cooperate in such enforcement actions brought by Contractor. The City shall not be liable to Contractor in any manner, including for any costs or damages such as lost revenues or lost profits, should any person or entity refuse to use Contractor's Solid Waste collection services and/or performs collection services in competition with Contractor, and in doing so violates the exclusive grant of franchise given to Contractor in this Agreement. In such event, Contractor's sole and exclusive remedy shall be to seek an injunction, damages or other available judicial relief against any such third person or entity that engages in any conduct or activity which violates Contractor's exclusive franchise rights under this Agreement.



F. Franchise Implementation Plan. Contractor shall prepare and submit annually to the City's Solid Waste Program Manager a Franchise Implementation Plan (the "Implementation Plan") which sets forth the specific implementation details of each service program listed in Article Two below. The Solid Waste Program Manager shall approve or review and comment on the Implementation Plan within 30 days after receipt of the Implementation Plan. Should the Solid Waste Program Manager fail to submit comments within 30 days, the Implementation Plan shall be deemed approved. If Contractor and the Solid Waste Program Manager fail to agree on the terms and conditions of the Franchise Implementation Plan, the Contractor may appeal the imposition of the terms and/or conditions in dispute to the City Council. The determination of the City Council shall be final.

## **2.2 FRANCHISE AREA**

The Franchise Area covered by this Agreement shall be all residential, commercial and industrial areas within the boundaries of the City as they exist on the Commencement Date of this Agreement, and as they may hereafter be changed by reason of annexation or de-annexation.

## **2.3 COLLECTION SERVICES PROVIDED BY CONTRACTOR**

A. City to Approve All Services. The nature of the collection services Contractor offers and provides to customers residing or doing business in the Franchise Area shall be subject to the approval of the City Council. The City Council may direct Contractor to change the level of such services from time to time on written notice to Contractor at least one hundred twenty (120) days prior to the planned effective date of such change. Within thirty (30) days after receipt of such notice, Contractor shall submit to City for City's presentation to the City Council a proposal for the directed change, which shall contain a description of the changed level of services, the personnel and equipment required, the publicity/public education program needed to effect the change, a five-year projection of the financial impact on Contractor anticipated from the change, and the proposed adjustments to Contractor's Collection Rates that are necessary or appropriate to effect the change. City and Contractor shall attempt to agree on the appropriate adjustments to Collection Rates within the remainder of such one hundred twenty (120) day period and, if they do not agree, the City Council shall adjust Contractor's Collection Rates by amounts that are reasonably determined by the Council to be sufficient to reimburse Contractor for its net direct costs of providing the changed level of service, plus a ten percent (10%) profit. The services that Contractor offers and provides to its customers affected by this Agreement shall be subject to the prior approval of the City Council or its designee. Nothing in this Agreement, however, shall be construed or interpreted as authorizing the City to reduce or adversely affect Contractor's exclusive franchise rights as specified in this Agreement except as provided in Section 1 of this Article.

B. Solid Waste Collection Services Frequency. To protect the public health and safety, the arrangements made by Contractor with its customers in the Franchise Area for the

collection of Solid Waste, shall provide for the collection of all such Waste generated or accumulated in residential, commercial, institutional and industrial premises within the Franchise Area at least once per week, or more frequently, as required by Chapter 13.08 of the Rocklin Municipal Code.

(1) Single-Family Units. The Contractor shall collect from all Single-Family Units Solid Waste (except Bulky Wastes) which have been placed, kept or accumulated in authorized Solid Waste containers, or bags or bundles, at curbside or other authorized collection station(s) prior to Contractor's normal weekly collection time. Contractor shall give its customers a minimum of two weeks advance written notice of any proposed change in a customer's regular collection day, except for temporary changes due to weather or similar transitory conditions.

(2) Multi-Family Units. Contractor shall collect from all multi-family authorized Solid Waste containers not less often than once per week, and more frequently if required by Chapter 13.08 of the Rocklin Municipal Code, to handle the Multi-Family Unit Waste stream of the premises where the containers are located, in a manner consistent with public health and safety.

(3) Commercial. Contractor shall collect from all commercial, industrial and institutional authorized Solid Waste containers not less often than once per week, and more frequently if required by Chapter 13.08 of the Rocklin Municipal Code to handle the Waste stream of the premises where the containers are located, in a manner consistent with public health and safety. Upon request of any customer, Contractor shall provide approved bins to premises where off-street collection is determined by the City to be feasible. The bins so provided shall be leakproof, in a neat, clean condition. Fees for such service shall be based upon rates established in this Agreement.

(4) Debris Boxes. Contractor shall provide residential, commercial, industrial and institutional customers with debris box service upon request. The collection schedule may be less often than once per week where the debris box contains only inert (non-putrescible) Waste materials and the City Municipal Code permits.

(5) Bulky Waste. Contractor shall not be required to remove items of a size, weight, and bulk (such as automobiles) from the premises of any customer which are not capable of being removed with the regular equipment and manpower employed by Contractor. Contractor will not be required to remove waste building material and other rubbish resulting from the construction, alteration or repair of buildings, housemoving or demolition, unless the customer has made independent arrangements with Contractor for debris box service.

C. Recyclable Materials and Greenwaste Collection Services. The Contractor is responsible for maintaining the following levels of service for source-separation programs and Recycling education, with no additional cost to the City, individual customers or rate payers as a group:

(1) New Greenwaste Collection Program. Contractor shall provide weekly curbside collection of Greenwaste to toter customers in the City. Greenwaste collection is a 96 gallon toter of yard waste including lawn clippings, leaves and tree branches that fit inside the toter. This service includes up to three 96 gallon toters for all customers at no additional charge.

(2) Office Paper. Upon request Contractor shall provide an appropriately sized bin for the separate collection of office paper to any commercial customer that generates one cubic yard or more of office paper per month. Collection frequency shall be at the discretion of the Contractor or within 48 hours of notification by the customer that the bin is full. The customer shall be responsible for payment of a one-time set-up charge. Contractor shall provide the customer a fact sheet describing what types of paper are acceptable for placement in the office paper bin. Contractor may discontinue this service to any customer that repeatedly discards unacceptable materials in the office paper bin.

(3) Newspaper Drop Off Bins. Bins for drop-off of newspaper shall be placed in locations identified in the Franchise Implementation Plan. Bins shall be of sufficient size to prevent overflow of materials and shall be serviced and maintained by Contractor for use by the general public.

D. Location of Waste Receptacles.

(1) The location of toters (and other receptacles as appropriate ) for collection of Waste and Recyclables shall be curbside unless an alternative location is specifically established in the Franchise Implementation Plan.

(2) Standard and detachable containers for refuse collection service to Multi-Family Units and commercial premises shall be placed in a location where practicably serviceable by Contractor, subject to approval by the City.

E. Senior Citizen Services. Residential customers whose head of household or spouse is 62 years of age or older shall receive collection service at special "senior citizen" rates to be established by Contractor.

F. Extra Residential and Commercial Services.

(1) Contractor shall provide additional toters to those residential customers that subscribe Unlimited Toter service at the toter rental rate and disposal fee shown in the schedule of Collection Rates.

(2) Bags, placed curbside for collection on occasion by residential customers, will be collected for disposal. The "extra bag fee" will be charged by Contractor in addition to the monthly residential rate. The extra bag fee shall be established pursuant to Article Four of this Agreement.

(3) If Contractor's collection vehicle driver must exit the vehicle to unlock/lock a gate to gain access to a residential customer's property or must exit the vehicle to enter the customer's property to retrieve the waste container, a "gate/backyard fee" will be charged by Contractor to that customer. The gate/backyard fee shall be established pursuant to Article Four of this Agreement.

(4) Contractor shall provide commercial customers with a bin pickup on other than a normal collection day upon request, or if the commercial customer so requests, shall allow the customer to reload a bin and Contractor shall pick up the bin a second time on a normal pickup day. Contractor will charge an "extra empty fee" to such customers for this service. The fee will be in addition to the monthly rate. The extra empty fee shall be established pursuant to Article Four of this Agreement.

(5) Commercial bin rental is the monthly fee charged for rental of a bin only. It does not include a disposal component. The Contractor shall charge the "extra empty fee" to a commercial customer whenever that customer requests a bin pickup.

G. Sanitation Requirements.

(1) Contractor shall not litter any premises or public property in making collections of Waste, nor shall any fluids, Waste or leachate be allowed to leak, blow or fall from collection vehicles. However, if in spite of normal precautions against spillage, fluids, litter or leachate spills or leaks on any premises or public property, Contractor shall immediately remove the same and clean up the area of spillage.

(2) Contractor shall, without delay, after removing Waste from any container, replace the container in its designated position on the premises with its cover on, and shall repair or replace at its expense, any containers damaged as a result of Contractor's handling thereof, normal wear and tear excepted.

(3) The Contractor shall not permit receptacles to be thrown from the truck to the pavement or parkway, nor in any other way permit damage to occur by rough or improper handling thereof.

(4) Individual storage containers shall not exceed forty-five (45) gallon capacity or weigh more than sixty (60) pounds when filled, except where the customer subscribes to toter service.

(5) Contractor shall close all gates after making collections and shall avoid crossing private or public planted areas and climbing or jumping over hedges and fences.

H. Hours of Collection. Contractor agrees that, in order to protect the peace and quiet of residents, its arrangements for the collection of Solid Waste and Recyclable Materials will provide that collections for residential areas and for schools, churches, hospitals, and for commercial districts within 50 feet of residential areas, shall not start before 5:00 A.M., or continue after 6:00 P.M., Monday through Friday, and 8:00 A.M. to 6:00 P.M. on

Saturday and Sunday of each week. Contractor's Personnel shall make all collections in a quiet and orderly manner and shall incorporate reasonable noise control features in equipment used by Contractor as may be required by the City. Contractor agrees to reasonably adjust the hours of commencement of collection operations in selected areas at the request of City where early collection activities have generated numerous complaints from nearby residents.

I. Collection of Holidays. Contractor has informed City that Contractor's arrangements with its Solid Waste customers will provide that if the day of collection on any given route falls on a Legal Holiday, observed by the Materials Recovery Facility to which Solid Waste collected within the Franchise Area is taken for Processing and/or disposal, Contractor may provide collection service for such route on the work day next following such holiday. If Contractor elects to adjust its collection schedule as stipulated herein, all subsequent collection days during that holiday week may be moved back one day in the discretion of Contractor, after Contractor has provided advance written notification to its customers. In situations beyond its control (e.g., severe weather and/or road conditions), Contractor will make its best efforts to collect Wastes in as timely a manner as possible.

J. Medical, Hazardous and Special Wastes. Contractor shall have the non-exclusive right under this franchise, but is not obligated to, collect, transport and dispose of material defined as Hazardous Waste or Special Waste herein. Contractor shall negotiate separate contracts and rates for Hazardous and Special Waste collection with each individual customer, which rates shall not require advance City approval, but may be reviewed by the City in its discretion at the request of any customer. Contractor shall not engage in the collection of Medical Waste; however, Contractor's principals may form a separate and independent company to engage in the collection and disposal of Medical Waste. City reserves the right to franchise other parties to perform Hazardous, Medical and Special Waste handling, provided that any such franchises shall be non-exclusive in the case of Medical Waste.

K. Special Collection Services. City reserves the right to issue a permit for providing special collection and disposal service to a customer if, upon request of the customer, the City determines that the Waste generated by said customer or the proposed use or manner of disposal is of such a special nature that it cannot reasonably be collected or disposed of by the Contractor under the terms of this Agreement.

L. Routes and Changes. Subject to the limitations in this section, the Contractor shall be required to provide Solid Waste collection service to all customers on City-maintained roads. Contractor shall further provide service on all non-City maintained private roads, provided that said roads are kept in a safe and good traveling condition.

(1) Customers whose parcels do not meet the above standard and who are not receiving curbside collection service from Contractor can make arrangements with Contractor to bring their can to a public road for collection by Contractor.

(2) In the event any road is unsafe or in such a state of disrepair that such will be either hazardous or potentially cause injury to the vehicles of Contractor, Contractor shall not be required to provide service to customers on said road.

(3) Upon request by City, Contractor shall provide a list of customers including name, address, route, level of service, and day of collection service. Before any change in the collection schedule on the various routes throughout the Franchise Area is made by the Contractor, Contractor shall obtain the written approval of the City, at least seven (7) days in advance of such change in the collection schedule, and Contractor shall provide a new map (as described above) embodying such change in the collection schedule. Contractor shall, at its own expense, notify the customers affected by such change in the collection schedule, at least seven (7) days before such change becomes effective.

M. Non-Collection Tags. When Solid Waste is not collected from any Solid Waste customer, Contractor shall immediately notify its customer as to why the collection was not made by attaching a tag to the Waste container not so collected which clearly identify the reasons for such non-collection. If Contractor is unable to collect Solid Waste from any customer due solely to customer's failure to properly place or provide access to the Waste container, and after Contractor has placed a non-collection tag on customer's container, and the customer requests that Contractor return to collect the Solid Waste, the Contractor shall be entitled to charge the customer an additional fee for that specific collection event. Said fee, if charged by Contractor to the customer, shall be subject to review by the City. Contractor shall remit the Franchise Fee component of such fee to City as stipulated in Article Six, Section 3.

## **2.4 ADDITIONAL OPERATIONS AND SERVICES; MARKETING OF RECYCLABLE MATERIALS; TRANSFER AND DISPOSAL**

A. Street Sweeping.

(1) In City's sole discretion, Contractor shall provide street sweeping service to City as specified in this section and as further detailed in the Implementation Plan. Street sweeping shall include the proper permanent disposal of the sweeper contents at the disposal site.

(2) Contractor shall sweep all non-residential streets designated in the Franchise Implementation Plan not less than one time per week. All other public or private streets designated in the Franchise Implementation Plan shall be swept not less than one time per month.

(3) Contractor shall furnish all labor, material and equipment necessary for street sweeping and the proper permanent disposal of the sweeper contents.

(4) Contractor shall provide reasonable notice, on an ongoing basis, to City's residents of street sweeping days and routes so that the number of cars and other obstacles in the street that might hinder the street sweeping may be minimized.

(5) Contractor and City Manager shall meet and reach reasonable agreement on terms for allowing Contractor to store its street sweeper and to temporarily stockpile the sweeper contents at the City's Corporation Yard. The agreement shall provide that stockpiled contents will be removed and properly disposed by Contractor when deemed necessary or within 48 hours of notice given by City. If unable to reach agreement, Contractor may request a hearing before the City Council.

B. Public Facilities. The Collector shall provide bins for, and shall collect refuse at least once each week without charge from, those City-owned facilities designated by the City Manager.

C. Universal Waste Program. Contractor shall collect Universal Waste once per month at the curbside for residential customers as set forth in the Implementation Plan. Universal Waste will be transported to the Shale Ridge Road facility or to the Material Recovery Facility for processing and recycling.

D. Quarterly E-Waste Pickup Days. Universal Waste shall be collected for all Rocklin residents at designated sites as set forth in the Implementation Plan on a quarterly basis.

E. Battery Drop Off Program. Contractor will start a household battery collection program. This will include partnering with businesses in Rocklin to provide drop off areas in convenient locations such as grocery stores. Contractor will provide a minimum of 10 drop off locations and will pickup batteries and deliver to the HHW Facility at the Material Recovery Facility or the Transfer Station in Auburn.

F. Emergency Services.

(1) Emergency Street Sweeping. Emergency street sweeping will be provided at a reasonable frequency on an on-call basis. Currently, phone numbers of key Contractor employees are in possession of Rocklin staff for emergency purposes. Contractor's street sweeper is parked in the Rocklin corporation yard to facilitate emergency street sweeping situations.

(2) Emergency Dead Animal Pickup For Large Animals. Contractor shall provide equipment and personnel for pickup and transport of large dead animals. This service shall be provided at a reasonable frequency on an on-call basis.

## **2.5 MARKETING OF RECYCLABLE MATERIALS**

A. Warranties. Contractor shall be solely responsible for any warranties, express or implied, which attach to its sale of Recyclable Materials to third Persons. Contractor acknowledges that the City, by virtue of entering into this Agreement or otherwise, has not made any representations or warranties to Contractor as to the merchantability or fitness for purpose of any of the materials, including source-separated Recyclable Materials, to be delivered to the Facility and expressly disclaims any such warranties.

B. Recording Keeping and Reporting. As requested by the City, at the end of each quarter during the Term, Contractor shall submit a report showing the quantity, measured in Tons, of Recyclable Materials collected by Contractor under the recycling programs in effect as of July 1, 2004. This format shall include, at a minimum, a breakdown of the Recyclable Materials collected by Contractor by category of material and the quantity of each such category of material collected by Contractor. Contractor shall also provide similar information as to any Recyclable Materials sold, recycled or reused by Contractor in sufficient form to enable City to comply with its AB 939 reporting requirements to the CIWMB.

C. Relationship of Parties Re Marketed Recyclables. Nothing contained herein shall be construed to create any employment, partnership, joint venture or co-ownership relationship between the parties, and Contractor shall not by any action allow any presumption to arise that a relationship of partnership exists between the parties.

## **2.6 DIRECTION OF DISPOSAL OF SOLID WASTE**

Contractor shall deliver all Solid Waste to the Western Regional Sanitary Landfill or the Materials Recovery Facility, as directed by the Authority, without sorting or processing. Salvaging or scavenging by Contractor or any of its employees is prohibited, except to the extent expressly allowed in this Agreement or otherwise permitted by the City in advance in writing.

## **2.7 HAZARDOUS WASTE SCREENING AND NOTIFICATIONS**

A. Compliance With Hazardous Waste Laws. The parties hereto recognize that federal, state and local agencies with responsibility for defining Hazardous Waste and for regulating the collection, hauling or disposing of such substances, are continually providing new definitions, tests and regulations concerning these substances. Under this Agreement, it is Contractor's responsibility, directly or through its advisors, to keep current on the regulations regarding such substances, to identify such substances, and to comply with all federal, state, and to the extent not inconsistent with this Agreement, local regulations concerning such substances. Contractor shall make every reasonable effort to prohibit the collection, transportation and the disposal of Hazardous Waste in any manner inconsistent with federal and state law.

B. Notice to Agencies Regarding Toxics. Contractor has represented to City that Contractor will carry out its duties to notify all agencies with jurisdiction, including the California Department of Toxic Substances Control and local emergency response providers, and, if appropriate, the National Response Center, of reportable quantities of Hazardous Waste, found or observed by Contractor in Solid Waste anywhere within the City, including on, in, under or about City's property, including streets, easements, rights of way and City's Waste containers. In addition to other required notifications, if Contractor observes any substances which it or its employees reasonably believe or suspect to contain Hazardous Wastes unlawfully disposed of or released on City's property, including streets, storm drains, or public rights of way, Contractor will also immediately notify the Solid Waste Program Manager or his/her designee.



C. Inspection for Toxics. Contractor shall conduct a visual inspection, consistent with its normal operating procedures, of all Solid Wastes that it collects, transports and/or disposes pursuant to this Agreement for the purpose of discovering, identifying and refusing to collect, transport and dispose of Hazardous Wastes.

D. No Collection or Disposal of Hazardous Waste. Except as provided in Article Two, Section 3.K, Contractor shall not collect, handle, process, transport, arrange for the transport of or dispose of Hazardous Waste.

## **2.8 COLLECTION EQUIPMENT**

A. Vehicle Standards. Contractor warrants that it shall provide an adequate number of vehicles and equipment for the collection, transportation, and disposal services for which it is responsible under this Agreement.

(1) All vehicles used by Contractor under this Agreement shall be registered with the Department of Motor Vehicles of the State of California, shall be kept clean and in good repair, and shall be uniformly painted.

(2) Solid Waste collection vehicles shall be washed such that they are maintained in a reasonably clean and sanitary condition. Contractor's name, telephone number and vehicle number shall be visibly displayed on its vehicles.

(3) Loads shall be kept completely covered at all times except when material is being loaded or unloaded, or when vehicles are in route or in the process of collection. Collection vehicles shall be designed and operated while in route in such a manner as to prevent mechanical fluids or Solid Waste, including leachate, from leaking, escaping or spilling. Any spillage of fluids or materials shall be immediately cleaned up by Contractor at Contractor's sole expense.

(4) The noise level generated by compaction vehicles using compaction mechanisms during the stationary compaction process shall be such that it does not unreasonably interfere with the quiet enjoyment of nearby properties.

(5) The equipment of Contractor used under this Agreement shall be subject to inspection by City on a semi-annual basis but shall not be subject to any permit fees therefor.

B. Vehicle Replacement Schedule. Contractor shall take all commercially reasonable actions to ensure replacement of at least five Waste collection vehicles in the Placer County area fleet every three years with a new vehicle utilizing a low air emission technology; provided, however, that new Greenwaste collection vehicles used by Contractor to implement the new Greenwaste collection program described in this Agreement shall not count as replacement vehicles for purposes of this section. Contractor may elect to replace vehicles ahead of this schedule. In addition, Contractor shall retrofit

all vehicles utilized by Contractor under this Agreement as necessary to comply with all applicable federal, state and local air quality regulations.

C. Equipment List. Upon the Commencement Date, and at least annually thereafter, the Contractor shall provide the City a written list of all collection and transportation equipment (including trucks and containers) being used within the Franchise Area, including make and model, age, mileage or hours of operation and type of vehicle.

D. Low Emissions Requirement. If changes in federal, state or local laws, including, but by no means limited to, the proposed California Air Resources Board Heavy Duty Engine Standards to be contained in CCR Title 13, Section 2020 et seq., and the Federal EPA's Highway Diesel Fuel Sulfur regulations, mandate that Contractor convert or retrofit its collection fleet to use the most cost-effective means to reduce air pollutant emissions, Contractor shall take all necessary steps to so comply, and shall be in full compliance with all other local, state and federal clean air requirements.

## **ARTICLE THREE – BILLING AND PAYMENT**

### **3.1 CONTRACTOR BILLING**

A. Billing For Services. Contractor shall bill all collection customers in the Franchise Area for all collection and hauling services at the Collection Rates determined in accordance with this Agreement. Contractor shall provide itemized bills, distinctly showing charges for all classifications of services, including the charges for late payments, where applicable.

B. Frequency. Billings must be made no less frequently than every quarter and may be mailed at the beginning of the billing period for all services to residential and commercial customers. Customers shall have until two weeks before the end of each quarter before their bill from Contractor may be deemed by Contractor to be delinquent. Contractor shall have sole responsibility for collecting delinquent collection service bills.

### **3.2 CITY COLLECTION ASSISTANCE.**

Contractor shall be assisted by City in the collection of unpaid bills for services provided to customers in the following manner:

A. On or before May 1st of each year, Contractor shall provide City with a listing of all uncollected accounts in the Franchise Area more than 180 days delinquent. Such listing shall be in a form approved by City.

B. Contractor shall work closely with City to collect delinquent parcel fee bills until August 1st of each year, at which time City shall place any remaining delinquent bills on the City tax rolls, Contractor shall return the delinquent balances to a zero balance, and Contractor shall submit to City a formal request for the reimbursement for the amount of the uncollected delinquent bills. City shall reimburse Contractor the total amount of the delinquent bills within 60 days of receipt of tax payments from the County of Placer, which

occur routinely in January and March of each year. Contractor shall credit or return to the customer any payments received from such customer after August 1st of each year toward future services.

C. City may seek to recover directly from delinquent property owners the actual cost of reimbursement plus an amount determined by the City Council to cover administration costs.

## **ARTICLE FOUR - PAYMENTS AND RATES**

### **4.1 FEES FOR PROVIDING COLLECTION SERVICES WITHIN THE FRANCHISE AREA**

A. General. Contractor's current Collection Rates are set forth in Exhibit A. Both parties acknowledge that the Collection Rates described consist of three distinct rate components: (1) a "Service Fee" component which reflects the costs of the Contractor, including Contractor's profit, to arrange for the collection and transport of Wastes from the customer's location to the Materials Recovery Facility, (2) a direct "pass through cost" of the Disposal Fees charged to dispose of Solid Waste at the Materials Recovery Facility, and (3) a direct "pass through cost" of the Franchise Fee.

Upon the Commencement Date, Contractor shall obtain, supply and provide all labor, materials, vehicles, equipment, and all other things implied or reasonably necessary to render all of the services and perform all covenants described in this Agreement. The Service Fee component and the disposal fee component together shall be Contractor's sole and exclusive compensation for its services and performance under this Agreement. Contractor shall not be entitled to any other compensation for such services and performance except as expressly provided for in this Agreement.

B. Annual Adjustment. Contractor's Collection Rates shall be subject to annual adjustment, commencing on July 1, 2010 and each succeeding July 1<sup>st</sup> (the "Rate Adjustment Date") of each year thereafter during the remaining Term of this Agreement or any Extensions to the Term, using the methodology described in Article Four, Section 5 below.

### **4.2 FRANCHISE FEE**

A. Franchise Fee Established. Contractor shall pay to City a Franchise Fee set by the City Council for the collection franchise granted hereunder, which fee shall be a percentage of the gross revenues derived by Contractor from the Collection Rates. The Franchise Fee for the Collection Rate revenues is ten percent (10%) effective as of April 1, 2009, and from time to time may be further adjusted by resolution of the City Council. The Franchise Fee component of the Collection Rate is a direct pass through cost.

B. Franchise Fee Due. The Franchise Fees shall be due and payable quarterly, for all revenues received during the quarter, within forty-five (45) days following the end of each quarter.

C. Change In Franchise Fee. City shall give Contractor a minimum of ninety (90) days notice of any changes in the Franchise Fee. The City Council may in its sole discretion change the Franchise Fee at any time during the Term of this Agreement. Any change in the percentage used to calculate the Franchise Fee shall be reflected in an immediate and corresponding change in the Franchise Fee component of the Collection. Contractor shall provide the City with a quarterly report, accompanying the quarterly Franchise Fee remittance, showing the derivation of the Franchise Fees owed to the City. The report shall contain, at a minimum, the total receipts from all residential, commercial and debris box accounts and the City's Franchise Fee portion thereof.

### **4.3 EXTRAORDINARY CHANGES IN COSTS OR REVENUES**

In the event any change in circumstances (including, without limitation, any change in Applicable Law or Environmental Law that requires Contractor to materially change its method of operations) occurs during the Term of this Agreement and such change in circumstances results in a material increase or decrease in Contractor's costs of providing collection services under this Agreement or materially decreases or increases Contractor's revenues from such collection services to such an extent that such changes are not otherwise accounted for hereunder, Contractor may apply to the City Council for an increase in Collection Rates sufficient to cover Contractor's increased costs or reduced revenues resulting from such change, or the City Council may initiate proceedings to decrease Collection Rates sufficient to cover Contractor's decreased costs or increased revenues resulting from such change. The moving party shall submit to the other party a thorough written explanation of the change in circumstances, as well as an explanation of why the change will result in an unaccounted for and material increase or decrease in costs or reduction or increase in revenues, together with such other data and supporting documentation as may be required by City. Contractor shall be entitled to at least sixty (60) days advance written notice and an opportunity to be heard by the City Council if the City initiates proceedings to reduce Collection Rates hereunder. The City shall grant the requested increase or decrease in Collection Rates if the City Council reasonably determines that good cause exists for such increase or decrease.

### **4.4 ADJUSTMENTS FOR CHANGES IN SCOPE**

If the City directs Contractor to change its operations, and such change results in a material increase in Contractor's net costs, and/or a material reduction in Contractor's net revenues, under this Agreement, Contractor may apply to the City Council for increases in Collection Rates to cover such increased costs and/or reduced revenue. Contractor shall submit to the City a thorough written explanation of the change, as well as an explanation of why the change will result in an unaccounted for increase in costs or reduction in revenue, together with such other data and supporting documentation as may be required by City. The City Council shall grant the requested increase in Collection Rates if the City Council reasonably determines that good cause exists for such increase. Increases in Collection Rates pursuant to this Section 11 shall take effect so as to cover Contractor's increased costs and/or reduced revenues resulting from the change from the date(s) such increase or reduction first occurs.

## 4.5 ANNUAL COLA ADJUSTMENT METHODOLOGY

The Service Component of Collection Rates subject to annual adjustments in this Agreement shall be adjusted to be effective on July 1st of each year during the Term for the succeeding Operating Year, commencing July 1, 2009.

The COLA shall be determined as follows:

$$\text{COLA} = 0.10 + 0.45 \times (\text{ECI}_i/\text{ECI}_0) + 0.45 \times (\text{PPI}_i/\text{PPI}_0)$$

OY = Operating Year commencing each July 1st and ending the subsequent June 30<sup>th</sup>.

ECI<sub>i</sub> = Employment Cost Index, Wages and Salaries, Private Industry, Blue-Collar Occupations, Not Seasonally Adjusted as published by the United States Department of Labor, Bureau of Labor Statistics for the fourth quarter of the prior operating year to the year the adjustment is to be made (e.g., adjustment for OY 09/10 will utilize statistics from the fourth quarter of 2008).

ECI<sub>0</sub> = Employment Cost Index, Wages and Salaries, Private Industry, Blue-Collar Occupations, Not Seasonally Adjusted as published by the United States Department of Labor, Bureau of Labor Statistics for the fourth quarter of 2008

PPI<sub>i</sub> = The Producer Price Index, All Commodities, Not Seasonally Adjusted as published by the United States Department of Labor, Bureau of Labor Statistics for the month of December of the prior operating year to the year the adjustment is to be made (e.g., adjustment for OY 09/10 will utilize statistics from December, 2008)

PPI<sub>0</sub> = The Producer Price Index, All Commodities, Not Seasonally Adjusted as published by the United States Department of Labor, Bureau of Labor Statistics for the month of December, 2008.

In the event any of these indices are no longer published, the parties shall confer in good faith to select an alternative index and shall confirm their agreement on a substitute index in writing. If the parties are unable to agree on a substitute index, either party may submit the selection of the substitute index to binding arbitration before a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. All percentages shall be computed to the third decimal place and the change in the Collection Rates shall be calculated to the nearest cent (\$.01).

The COLA applied to Contractor's collection rates in any given year shall not under any circumstances exceed four percent (4%). If the COLA as calculated using the foregoing formula exceeds four percent (4%) for a given year, the percentage by which the COLA exceeds four percent in that year shall be carried forward and added onto the next year's COLA percentage resulting from the formula if it is below four percent; provided that the resulting COLA for the following year shall not exceed four percent (4%). There shall be no carry forward of unused COLA percentage increases to a third consecutive year. By way of

example, if the COLA for the first year is 4.3%, then .3% shall be carried forward to the second year. If the COLA for the following year as calculated using the formula is 3.8%, then the COLA as applied to Contractor rates and fees in the second year shall be increased to 4.0%, and the remaining .1% of the prior year's COLA increase shall not be carried forward to the third year.

If the COLA calculated using the foregoing formula is negative for a given year, Contractor's rates and fees shall not be adjusted for that year. In consideration for the City entering into this Agreement with Contractor, Contractor has waived its right under any or all of the Prior Agreements to receive an inflation adjustment for increases in inflation during calendar year 2009.

#### **4.6 UNDERPAYMENT OF FRANCHISE FEES**

Should any examination or audit of Contractor's records reveal an underpayment of Franchise Fees or any other payments required to be paid by Contractor to City under this Agreement, the amount of such underpayment shall become due and payable to City not later than thirty (30) days after written notice of such underpayment is sent to Contractor by City. Should an underpayment of more than five percent (5%) or Five Thousand Dollars (\$5,000.00), whichever is less, be discovered, Contractor shall bear the entire cost of the City's audit or examination, and said cost shall not be recoverable through any rate setting.

### **ARTICLE FIVE – GENERAL PROVISIONS**

#### **5.1 RECORDS AND ACCOUNTING**

A. Financial Reporting. Contractor shall maintain a proper set of books and records on an accrual basis, and an annual financial statement, reviewed by Contractor's certified public accountant, in accordance with generally accepted accounting principles, accurately reflecting the business done by it under this Agreement. Contractor shall submit to the City each year a copy of its reviewed annual financial statement as soon as it is received by Contractor, but in all events no later than four (4) months following the close of Contractor's fiscal year (which begins October 1st and ends on September 30th).

B. Service Records. Contractor shall maintain all records relating to the services provided hereunder, including, but not limited to, customer lists, billing records, route maps, AB 939 records, and customer complaints for a period of five (5) years from the date of the generation of each such record. The City or its agent(s) shall have the right, upon ten (10) business days advance notice, to inspect all maps, AB 939 records, Contractor's books and records, customer complaints, and other like materials of the Contractor which reasonably relate to Contractor's compliance with the provisions of the Agreement. Such records shall be made available to City at Contractor's regular place of business, but in no event outside of the City. Contractor shall further maintain and make available to City, records as to number of customers, total and by type, route maps/route listings, service records and other materials and operating statistics regarding the services provided hereunder in such manner and with such detail as City may require. City shall treat all information required by this paragraph and provided by Contractor as confidential information to the maximum

extent permitted by Applicable Law and shall not be used or disclosed except as expressly authorized hereby. City shall not make or retain copies or photocopies containing information set forth in Contractor's confidential financial and business records pertaining to the establishment of rates and payment of Franchise Fees without executing a Confidentiality Agreement providing that City shall hold and keep such copies and photocopies confidential. The Confidentiality Agreement shall be negotiated in good faith between the City and Contractor, and commemorated in a separate legally binding document prior to any subsequent rate increase.

C. Examination of Financial Records.

(1) The information required by this Section shall pertain to Contractor's operations covered and regulated by this Agreement, and nothing contained herein shall require the Contractor to provide the City with information pertaining to the Contractor's operations which are not regulated by the City, except in conformance with this Section 1(C).

(2) The City's Agents shall be entitled to examine the books, records and financial statements of Contractor and its Affiliates pertaining to operations not regulated by the City for the sole purpose of gathering information necessary to allow the Agents to ascertain whether income, expenses, assets and liabilities are reasonably and consistently allocated among operations regulated by City and those not regulated by the City and to assess the reasonableness of any transactions between Contractor and any of its Affiliates. A transaction shall be deemed to be reasonable if, in the judgment of City's Agent, the price for any goods or services provided by an Affiliate to Contractor represent an established market price for such goods or services. Contractor shall obtain City's written approval of its method of segregating its financial records between collection operations within the Franchise Area and outside the Franchise Area.

(3) Information gained from examination of records pertaining to operations not regulated by the City shall be treated by the City and its Agents as confidential information to the maximum extent permitted by Applicable Law and shall not be used or disclosed except as expressly authorized hereby. City's Agents shall prepare a confidential report regarding the results of their examination of Contractor's non-regulated operations and transactions with Affiliates. City's Agent shall issue its report on Contractor's non-regulated operations and Contractor's transactions with Affiliates to City's counsel, and said report shall remain confidential, except that the dollar amount and general description of any costs that City's Agent recommends be disallowed shall be disclosed to City's governing body. If Contractor appeals the conclusions of said report to City's governing body, Contractor shall decide what portions, if any, of said report shall be disclosed to City's governing body. City's governing body shall then consider Contractor's appeal, but may, in its discretion, deny said appeal if inadequate information has been disclosed to City's governing body to make an informed decision on the appeal.

(4) For review of books and other financial records necessary to verify the Contractor's income, expenses, assets and liabilities, "Agent" shall mean a qualified firm designated by City, provided such firm does not have a conflict of interest from its representation of any party deemed by Contractor to be a competition of Contractor.

D. Public Records. Nothing in this section will prevent City from allowing public access to City's records as provided for under the California Government Code, and in the event any dispute arises as to the public access to information provided by Contractor under the terms of this Agreement, the City shall provide public access to said information only after tendering the defense of any claims made against the City for disclosure of said information to Contractor.

E. City Access to Customer Lists. Upon reasonable notice or as otherwise agreed herein, and at those times designated by the City, Contractor shall supply to the City lists of the names of all customers of Contractor who are provided any service by Contractor within the Franchise Area. At the same or other time, the City may request, and the Contractor shall provide, information specifying each customer's address, type of service provided to that customer, the number and type of authorized Solid Waste containers used by or provided to each customer, whether and which customers are believed to be violating this Agreement, any mandatory subscription ordinance or any other provision of the law, and any other information that the City determines, in its sound discretion, reasonably required to monitor implementation of this Agreement and/or discharge the City's responsibilities under the law.

## **5.2 REPORTS AND ADVERSE INFORMATION**

A. Annual Reports. Within one hundred and twenty (120) days after the end of each Operating Year, Contractor shall submit to the City a written annual report, in a form approved by the City, including, but not limited to, the following information:

- (1) A summary of the previous year's activities (or in the case of the initial year, the initial year's activities), including, but not limited to, services begun or discontinued during the Operating Year, and the number of customers for each class and level of service;
- (2) A revenue statement setting forth quarterly Franchise Fees, and the basis for the calculation thereof, certified under penalty of perjury by an officer of Contractor; and
- (3) A list of Contractor's officers and members of its Board of Directors.

B. Adverse Information. Contractor shall provide City with two (2) copies of all reports or other material adversely reflecting on Contractor's performance under this Agreement, submitted by Contractor to the California or U.S. EPA, the California Integrated Waste Management Board, or any other federal, state or City agency. Copies shall be submitted to City simultaneously with Contractor's filing of such matters with said agencies.



Contractor's routine correspondence to said agencies need not be automatically submitted to City, but shall be made available to City upon written request, as provided in this section.

(1) The Contractor shall submit to City copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by the Contractor to, as well as copies of all decisions, correspondence and actions by, any federal, state and local courts, regulatory agencies and other governmental bodies relating specifically to all material aspects of Contractor's performance of services pursuant to this Agreement. Any data which the Contractor seeks to be excluded from provisions of the California Public Records Act shall be clearly identified as such by Contractor with the basis for such exclusion clearly specified. In the event City receives a request under the California Public Records Act, or by subpoena, the City shall provide two days notice to Contractor to permit Contractor to object to the release of the information requested or subpoenaed.

(2) Contractor shall submit to the City such other information or reports in such forms and at such times as the City may reasonably request or require.

(3) All reports and records required under this or any other section shall be furnished by the Contractor, and the expense therefor in the gathering and preparation of such information, reports and records shall be included in the rate base.

C. AB 939 Requirements. During the term of this Agreement, Contractor shall submit to City quarterly, or more often if required by law, information reasonably required by City to meet its reporting obligations imposed by AB 939, and the regulations implementing AB 939, in a manner approved by City. Contractor agrees to submit such reports and information on computer disks in a format compatible with City's computers if reasonably requested by City.

D. Failure to Report. The refusal, failure or neglect of the Contractor to file any of the reports required, or to provide material information to City, or the intentional inclusion of any materially false or misleading statement or representation made knowingly by the Contractor shall be deemed a material breach of this Agreement, and shall subject the Contractor to all remedies, legal or equitable, which are available to the City under this Agreement.

### **5.3 REVIEW OF PERFORMANCE AND QUALITY OF SERVICE**

A. Performance Review. From time to time, at its sole discretion, City may examine Contractor's operation in order to evaluate whether or not the Contractor is operating at a satisfactory level of efficiency and customer satisfaction.

Contractor agrees to cooperate in any such examination, and shall, upon reasonable advance notice, permit City's representatives to inspect, at Contractor's principal place of business, such information pertaining to Contractor's obligations hereunder as City may require, including but not limited to, such things as customer inquiry records, collection

routes and equipment records. Access to Contractor's records shall be subject to Section 1 of this Article.

B. Public Hearing. At City's sole option, within ninety (90) days of the first anniversary of the Commencement Date of this Agreement, and each year thereafter throughout the term of the Agreement, City may hold a public hearing at which the Contractor shall be present and shall participate, to review the Contractor's performance and quality of service. The reports required by this Agreement regarding customer complaints shall be utilized as the basis for review. In addition, any customer may submit comments or complaints during the review meetings, either orally or in writing, and these shall be considered.

C. Report on Performance. Within thirty (30) days after the conclusion of the public hearing, City shall issue a report with respect to the adequacy of performance and quality of service. If any non-compliance with this Agreement is found, City may direct Contractor to correct the inadequacies or initiate proceedings in accordance with this section.

D. Customer Surveys; Billing Information.

(1) Contractor shall provide prompt, efficient, continuous and professional service to its customers.

(2) Upon the request of the City, Contractor shall provide the City with a complete mailing list for all of Contractor's customers within the Franchise Area.

(3) Upon initiation of service, Contractor shall send or deliver to its customers, information concerning the conditions of service, including, but not limited to, rates, fees, charges, service options, payment options, discounts (if any), service level and inquiry/complaint procedures, including the name, address and local telephone number of Contractor. The form and content shall be subject to the review and approval of the Solid Waste Program Manager.

(4) If directed by City, Contractor shall include customer service surveys prepared by City with their customer billing statements.

#### **5.4 NEW OPERATIONS AND SERVICES**

The City may from time to time during the Term request that Contractor perform new operations within the City's jurisdiction that are not within the scope of services in this Agreement (hereinafter "New Operations"). Contractor hereby covenants to offer to perform such New Operations at a commercially reasonable price, providing for reimbursement of the Contractor's direct costs of providing the New Operations, plus a profit not to exceed ten percent (10%) of Contractor's direct and documented or reasonably supportable projected costs in performing such New Operations. The Contractor shall be obligated to perform New Operations at Contractor's proposed price if the City accepts the Contractor's proposal within sixty (60) days, unless otherwise noted in the Contractor's proposal, following the City's receipt of Contractor's proposal; however, the City shall have the discretion to accept Contractor's proposal, or to not have the New Operations

performed at all, or to seek and accept proposals for such New Operations from other parties after either City or Contractor determines not to provide the New Operations or have the New Operations provided. In carrying out the intent of this paragraph, the following terms and conditions shall also apply:

A. The City's Written Request. The City must submit to Contractor a written request to perform New Operations, with reasonable detail to allow Contractor to estimate the additional costs to Contractor to perform such services ("Request for Additional Services").

B. The Contractor's Estimates. Within thirty (30) days after receipt of a Request for Additional Services, Contractor shall provide to the City a written estimate of Contractor's commercially reasonable price for performing such additional services, with a detailed breakdown of the components of Contractor's projected costs and pricing proposal costs and documentation which reasonably supports Contractor's projected costs.

C. Method of Acceptance of Contractor's Proposal and Effect Thereof. The City may, within sixty (60) days of receipt of Contractor's proposal and in its sole discretion, deliver a written acceptance to the Contractor of its proposal to perform such New Operations and the Contractor shall perform such New Operations as called for in the City's Request for Additional Services and in accordance with Contractor's pricing proposal. The City shall pay Contractor for Contractor's performance of such New Operations at the dollar amount set forth in Contractor's pricing proposal and in accordance with the payment and payment adjustment provisions in this Agreement.

## **5.5 PRIVACY**

A. Privacy of Customer Information. Contractor shall use all reasonable efforts to observe and protect the rights of privacy of customers. Information identifying individual customers, or the composition or contents of a customer's refuse or Recyclables shall not be revealed to any Person, private agency or company, unless upon the request of federal or state law enforcement Personnel, the authority of a court of law, by statute, or upon valid authorization of the customer. This provision shall not be construed to preclude Contractor from preparing, participating in, or assisting in the preparation of Waste characterization studies or Wastestream analyses which may be required by AB 939, or any other reports requested by the City under this Agreement or required or requested by any governmental agency.

B. Mailing Lists. Contractor shall not market or distribute outside the normal course of its business mailing lists with the names and addresses of customers.

## **5.6 PUBLIC ACCESS TO CONTRACTOR**

A. Office Hours. Contractor shall maintain an office open to the public and customers at 12305 Shale Ridge Road in Auburn, California. Contractor's office hours shall be, at a minimum, from 8:00 A.M. to 12:00 P.M., and from 1:00 P.M. to 4:30 P.M. daily, on all collection days, excluding holidays. A representative of Contractor shall be available during office hours for communication with the public at Contractor's principal office. Contractor

shall also provide City with an emergency telephone number for use during other than normal business hours. Contractor shall have a representative, informative answering device or answering service available at said after-hours telephone number during all hours other than normal office hours.

B. Withholding of Service. Collection service may be withheld by Contractor during any period in which bills for prior service remain delinquent, such bills becoming delinquent fifteen (15) days after the payment due date for each such bill.

C. Service Complaints.

(1) All customer complaints shall be directed to Contractor. Contractor shall record all complaints received by mail, by telephone, or in Person (including date, name, address of complainant and nature of complaint). Contractor agrees to use commercially reasonable efforts to resolve all complaints by the close of business of the second business day following the date on which such complaint is received. Service complaints may be investigated by the Solid Waste Program Manager or his/her designee. Unless a settlement satisfactory to the complainant and the Contractor is reached, the complainant may refer the matter to the Solid Waste Program Manager or his/her designee for review.

(2) Contractor will maintain records listing the date of all customer complaints, the customer, describing the nature of the complaint or request, and when and what action was taken by the Contractor to resolve the complaint. All such records shall be maintained for a period of twenty-four (24) months and all current complaint records shall be mailed to the City quarterly.

(3) The Solid Waste Program Manager or his/her designee may determine if a customer's complaint is justified, and if so, what reasonable remedy, if any, shall be imposed. The remedy under this section shall be limited to a rebate of customer charges related to the period of breach of any of the terms of this Agreement, provided the statute of limitations under Applicable Law shall not have expired.

D. Government Liaison Person. The Contractor shall designate a "government liaison person" who shall be responsible for working with the Solid Waste Program Manager or his/her designated representative to resolve consumer complaints.

E. Regular Meetings With City. At the reasonable request of City, Contractor shall meet with the City to discuss matters of mutual concern, including, but not limited to, problems in Contractor's service, compliance with AB 939 and future planning. The Person attending these meetings on behalf of Contractor shall be vested with sufficient authority to make decisions binding on Contractor.

## **5.7 COMPLIANCE WITH LAWS AND REGULATIONS**

Contractor warrants that in performing its obligations under this Agreement it will comply with all Applicable Laws in effect during the term of this Agreement, including implementing

regulations, as they may, from time to time, be amended, and it will comply with all local laws and regulations applicable to Contractor to the extent they are not inconsistent with the terms of this Agreement. Contractor shall comply with all final and binding judgments entered against Contractor regarding its services performed under this Agreement.

## **5.8 INDEMNIFICATION**

As used in this section, "City Indemnified Parties" means the City and its City Council, officers, directors, employees, agents, consultants, representatives, successors and assigns.

A. Indemnification of City. Contractor shall defend, indemnify, and hold the City Indemnified Parties harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including reasonable attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any Person, including, but not limited to, workers, City employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the Contractor's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the City, the Contractor, subcontractor(s) and employee(s) or any of these, except for the sole, or active negligence of the City, its officers and employees, or as expressly prohibited by statute. This duty of Contractor to indemnify and save City Indemnified Parties harmless includes the duties to defend set forth in California Civil Code Section 2778.

B. Hazardous Substance Indemnification. Contractor shall protect, defend (with counsel selected by Contractor and reasonably acceptable to City), indemnify and hold harmless City Indemnified Parties from and against all claims for actual damages (including but not limited to special and consequential damages), natural resources damages, punitive damages, restitution, injuries, costs, response costs, remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (including but not limited to reasonable attorney's and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, the City Indemnified Parties, arising out of or resulting from the acts or omissions of Contractor in connection with or related to the performance of this Agreement and concerning the release or threatened release of any Hazardous Waste or Hazardous Materials collected, transported, received, and/or disposed of by Contractor, including, without limitation, any repair, cleanup, detoxification, or preparation and implementation of any removal, remedial, response, closure, corrective action or other plan (regardless of whether undertaken due to governmental action). The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response and Liability Act ("CERCLA"), 42 U.S.C. Section 9607(e), and California Health and Safety Code Section 25364, to defend, protect and hold harmless and indemnify the City Indemnified Parties from liability. This provision shall survive the termination of this Agreement between Contractor and the City. The foregoing indemnity shall not have any dollar limitation. The foregoing indemnity is for the exclusive benefit of the City Indemnified

Parties and in no event shall such indemnity inure to the benefit of any third party. The foregoing indemnity shall supersede any other environmental indemnities of the Contractor under this Agreement.

The foregoing indemnity shall not apply with respect to: (1) any Hazardous Waste or Hazardous Materials generated by the City and delivered by the City to Contractor; or (2) the disposal or release of Hazardous Materials or Hazardous Waste, which disposal or release has resulted from the active negligence or willful misconduct of City. Nothing in these exclusions shall be deemed a waiver of any other rights or claims the City may have against Contractor independent of this indemnity.

C. AB 939 Indemnification.

(1) General. Contractor shall protect, defend with counsel reasonably acceptable to the City, indemnify and hold the City harmless from any and all fines, penalties and assessments levied against or threatened to be levied against the City for the City's failure to meet the requirements of AB 939, its amendments or any successor legislation and/or all rules and regulations promulgated thereunder if said failure results from Contractor's failure to comply with this Agreement and/or Contractor's failure to comply with said laws, rules or regulations binding on Contractor, including, but not limited to, failing to timely supply the City with information required to be provided to City under this Agreement in order to comply with AB 939. However, Contractor shall not be obligated to indemnify City for fines or penalties caused by City's modifications of Contractor's information, or by City's own acts or omissions which result in City's failure to provide timely reports to the state. This indemnity obligation shall be subject to the conditions and limitations set forth in Public Resources Code section 40059.1 as in effect on the Commencement Date.

(2) Unforeseeable Consequences. In the event that Contractor shall have used its best efforts to ensure that the diversion requirements of AB 939 are achieved, but shall determine that such requirements may nonetheless not be satisfied, Contractor shall give City prompt written notice of such determination. City and Contractor shall then meet promptly to decide whether to increase Collection Rates and/or Processing Fees to fund additional efforts which were unforeseeable on the date hereof and which Contractor has reasonably not undertaken to date to satisfy such diversion requirements.

D. Survival. The indemnities in this Section shall survive termination of this Agreement.

## **5.9 INSURANCE**

A. Insurance Coverage. Contractor, at Contractor's sole cost and expense, shall procure from an insurance company or companies admitted to do business in the State of California and subject to the regulation of the California Insurance Commissioner and shall maintain in force at all times during the Term the following types and amounts of insurance:

(1) Workers' Compensation and Employer's Liability. Contractor shall maintain workers' compensation insurance covering its employees in statutory amounts and otherwise in compliance with the laws of the State of California. Contractor shall

maintain Employer's Liability insurance in an amount not less than Five Million Dollars (\$5,000,000) per accident or disease.

(2) General Liability and Automobile Liability. Contractor shall maintain comprehensive Commercial General Liability insurance with a combined single limit of not less than Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) aggregate covering all claims and all legal liability for Personal injury, bodily injury, death, and property damage, including the loss of use thereof, arising out of Contractor's performance of, or its failure to perform, services under this Agreement.

The insurance required by this subsection shall include:

- (a) Premises Operations (including X, C and U coverages;
- (b) Independent Contractor's Protective;
- (c) Products and Completed Operations, protecting against possible liability resulting from use of Recyclable Materials by another Person;
- (d) Personal Injury Liability with Employment Exclusion deleted;
- (e) Broad Form Blanket Contractual, with no exclusions for bodily injury or property damage; and
- (f) Broad Form Property Damage, including Completed Operations.

Contractor shall also maintain Automobile Liability Insurance for each of Contractor's vehicles used in the performance of this Agreement, including owned, non-owned, leased or hired vehicles, in the minimum amount of Five Million Dollars (\$5,000,000) combined single limit per accident.

The Commercial General Liability and Automobile Liability insurance required by this section shall be written on an "occurrence" (or in the case of Automobile Liability, on an "accident" basis), rather than a "claims made" basis, if such coverage is readily obtainable for a commercially reasonable premium. If it is not so obtainable, Contractor must arrange for an extended reporting period ("tail coverage") to protect the City from claims filed within one (1) year after the expiration or termination of this Agreement relating to incidents that occurred prior to such expiration or termination. The policy may not contain a deductible or self-insured retention of more than Ten Thousand Dollars (\$10,000.00) per occurrence without prior written approval of the City. The policy limit and the self-insured retention shall be adjusted as of each such five (5) year anniversary of July 1, 2003 utilizing the same procedures provided in Article Six, Section 13, rounded to the nearest \$1,000,000 in relation to policy limits and to the nearest \$10,000 in relation to self-insured retentions. The existence of a self-insured retention or deductible shall not affect Contractor's duty to defend and

indemnify the City under this Agreement as to Claims below the self-insured retention or deductible level.

(3) **Pollution Liability.** Contractor shall purchase and thereafter maintain, so long as such insurance is available on a commercially reasonable basis, Pollution Liability insurance in the amount of Two Million Dollars (\$2,000,000) covering liability arising from the sudden and accidental release of pollution on the Facility Site.

(4) **Physical Damage.** Contractor shall maintain comprehensive (fire, theft and collision) Physical Damage insurance covering the vehicles and the machinery and equipment that is owned by Contractor and used in providing service to the City under this Agreement, with a deductible or self-insured retention of not greater than Fifty Thousand Dollars (\$50,000).

All insurance companies required by this Section shall be issued by an insurance company or companies admitted to do business in California, subject to the regulation by the California Insurance Commissioner, and with a rating in the most recent edition of Best's Insurance Reports of size category X or larger, and a rating classification of A- or better, except for the Pollution Liability policy which may be issued by any company subject to the approval of City, which approval shall not be unreasonably withheld. The City Risk Manager may waive some or all of these conditions, in his sole discretion, if Contractor provides evidence that the required insurance cannot be obtained for a commercially reasonable price from a company or companies that meet(s) the forgoing qualifications.

B. Required Endorsements

(1) The Worker's Compensation policy shall contain endorsements in substantially the following form:

(a) "Thirty (30) days prior written notice shall be given to the City in the event of cancellation of this policy. Such notice shall be sent to:

City of Rocklin

c/o Director of Administrative Services

3970 Rocklin Road

Rocklin, CA 95677

(b) "Insurer waives all right of subrogation against the City and its officers and employees for losses arising from work performed for the City."

(2) The Comprehensive General Liability policy shall contain endorsements in substantially the following form:



(a) "Thirty (30) days prior written notice shall be given to the City in the event of cancellation of this policy. Such notice shall be sent to:

City of Rocklin

c/o Director of Administrative Services

3970 Rocklin Road

Rocklin, CA 95677

(b) "The City, its officers, employees, and agents are additional insureds on this policy."

(c) "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the City, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."

(d) "Inclusion of the City as an insured shall not affect the City's rights as respects any claim, demand, suit or judgment brought or recovered against Contractor. This policy shall protect Contractor and the City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the insurer's liability as set forth in the policy beyond the amount shown or to which the insurer would have been liable if only one party had been named as an insured."

(3) The Physical Damage policy shall contain the following endorsements:

(a) Notice of cancellation, as provided in subsection B.2(a).

(b) Cross liability endorsement, as provided in subsection B.2(d).

(c) Waiver of subrogation against the City.

C. Delivery of Proof of Coverage. No later than five (5) days after the execution of this Agreement by the Parties, Contractor shall furnish the City a certificate for each policy of insurance required under this Article in form and substance satisfactory to the City. Each such certificate shall show the type and amount of coverage, effective dates and dates of expiration of policies and shall have all required endorsements. If the City requests, copies of each policy, together with all endorsements, shall also be promptly delivered to the City.

Contractor shall furnish renewal certificates to the City to demonstrate maintenance of the required coverages throughout the Term.

Furnishing of evidence of required insurance being in force is a condition to Contractor's entitlement to payment.

#### D. Other Insurance Requirements

(1) In the event any services hereunder are delegated by Contractor to a subcontractor, Contractor shall require all such subcontractors to provide statutory workers' compensation insurance and employer's liability insurance for all of the subcontractor's employees engaged in the work. The general liability insurance required by this section shall cover Contractor's liability for acts of its subcontractors or each subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this section.

(2) Contractor shall comply with all requirements of the insurers issuing policies and shall require its subcontractors to do so. The carrying of insurance shall not relieve Contractor from any obligation under this Agreement, including those imposed by this Article. If any Claim is made by any third Person against Contractor or any subcontractor on account of any occurrence related to this Agreement, Contractor shall promptly report the facts in writing to the insurance carrier and to the City. If Contractor fails to procure and maintain any insurance required by this Agreement, the City may take out and maintain, at Contractor's expense, such insurance as is required hereunder and deduct the cost thereof from any monies due Contractor.

(3) If requested by the City, the Comprehensive General Liability policy shall be promptly, and at no cost to the City, amended by endorsement to add the trustee of any bonds, which were, or may be in the future, issued by the City to finance the original construction of the Facility, as an additional insured, provided such amendment does not result in a material increase in premiums.

#### **5.10 PERFORMANCE BOND.**

Contractor shall furnish a performance bond or letter of credit ("performance bond") securing the Contractor's faithful performance of its obligations under this Agreement, the principal sum of which shall be One Hundred Thousand Dollars (\$100,000). The form of such bond shall be substantially as provided in Exhibit B. The term of the bond and any successor performance bond shall end on March 31, except for the last such successor performance bond's term which shall end on March 30, 2009. Each then current performance bond shall be either extended or replaced by a new performance bond, and in substantially the same form as Exhibit B. Not less than ninety (90) days before the expiration of each such current performance bond, Contractor shall furnish either the replacement bond or a continuation certificate, executed by the surety. It is the intention of this section that there be in full force and effect at all times a bond securing the Contractor's faithful performance of its obligations, duties and other commitments under this Agreement throughout its Term.

#### **5.11 RIGHTS OF CITY TO PERFORM DURING EMERGENCY.**

A. Emergency Collection. Should Contractor, for any reason whatsoever, including the occurrence or existence of force majeure as defined in Section 17(A) of this Article, refuse

or be unable to collect, transport and dispose of any or all of the Solid Waste which it is obligated under this Agreement to collect, transport and dispose of for a period of more than seventy-two (72) hours, and if as a result thereof, Solid Waste should accumulate in the Franchise Area to such an extent, in such a manner, or for such a time that the Solid Waste Program Manager in the exercise of his/her sole discretion, should find that such accumulation endangers or menaces the public health, safety or welfare, then in such event City shall have the right, upon twenty-four (24) hour prior written notice to Contractor, during the period of such emergency, to contract on a temporary basis with third parties to collect and transport any and all Solid Waste which Contractor would otherwise be obligated to collect and transport pursuant to this Agreement.

B. Contractor to Cooperate. Contractor agrees that in such event described in Section 11(A) above it will fully cooperate with City and its third-party contractor to effect such a transfer of operations in as smooth and efficient a fashion as is practicable.

C. Contractor to Pay Increased Costs. All costs, fees, rates and other expenses incurred by the City and/or its third-party contractor that exceed those which would have been incurred by City had no such emergency described in Section 11(A) above arisen shall be the responsibility of the Contractor, and shall be paid to the City within thirty (30) days of Contractor's receipt of written notice to so pay, except where the reason for Contractor's failure to perform was due to force majeure as defined in Section 17(A) of this Article.

## **5.12 TERMINATION**

A. Default by Contractor. Each of the following shall constitute a Default under this Agreement on the part of the Contractor:

(1) Material Breach of Contractor's Obligations. The material failure or refusal of Contractor to comply with the obligations and duties imposed on Contractor pursuant to this Agreement, subject to the following: In the event of any such material failure or refusal, City and Contractor shall meet and confer in good faith in an effort to agree on a resolution and cure of the breach. If the parties are unable to agree on an informal resolution or cure of the breach, such material failure or refusal shall constitute a Default if:

(a) The City shall have given prior written notice to the Contractor specifying that a particular material failure or refusal to perform exists which will, unless corrected, constitute a Default on the part of the Contractor under this Agreement; and

(b) The Contractor has not corrected such material failure or refusal within thirty (30) days or, if such material failure or refusal is not reasonably capable of being cured within said thirty day period, has not taken reasonable steps to commence to correct the same within thirty days from the date of the notice given pursuant to this section, and thereafter does not diligently continue to take reasonable steps to correct such material failure or refusal.

(2) **Events of Insolvency.** The Contractor, or either of them, (a) being or becoming insolvent or bankrupt, or ceasing to pay its debts as they mature, or making an arrangement with or for the benefit of its creditors, or consenting to or acquiescing in the appointment of a receiver, trustee or liquidator for a substantial part of its property; or (b) being or becoming a party to a voluntary or involuntary bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding instituted by or against the Contractor under the laws of any jurisdiction, which proceeding, if involuntary in nature, has not been dismissed within sixty (60) days; or (c) taking any action approving of, consenting to, or acquiescing in any such proceeding; or (d) being a party to the levy of any distress, execution or attachment upon the property of the Contractor which shall substantially interfere with the Contractor's performance hereunder. In the event of the Contractor being or becoming insolvent or bankrupt, the Contractor shall (i) assume or reject this Agreement within sixty (60) days after the order for relief; (ii) promptly cure any failure to perform its obligations or any event of default arising under this Agreement for reasons other than the event set forth in this paragraph; and (iii) provide adequate assurance of future performance under this Agreement under 111 USC Section 365(b)(1)(c), or any successor provision of the Federal Bankruptcy Code. The foregoing provisions shall not prevent the City from requesting such other conditions to assumption of this Agreement, as it deems reasonable and necessary.

B. **No Waivers.** Any waiver of a Default shall not be deemed to be a waiver of any subsequent Default or to be construed as approval of a course of conduct.

C. **Termination.** Upon the occurrence of a Default and the declaration of termination of this Agreement by the City Council, this Agreement and the franchise granted hereunder shall be of no further force and effect, excepting those obligations of each party to the other which in order for such party to reasonably carry them out should survive termination of this Agreement, including, but not limited to City's rights to indemnity and to temporarily assume Contractor's obligations. City then shall be free to enter into whatever other arrangements are deemed by City to be justified and necessary for the collection, removal and disposal of Solid Waste within the Franchise Area.

D. **Default by City.** Each of the following shall constitute a Default under this Agreement on the part of the City:

(1) **Material Breach of City's Obligations.** The material failure or refusal of City to comply with the obligations and duties imposed on City pursuant to this Agreement, subject to the following: In the event of any such material failure or refusal, City and Contractor shall meet and confer in good faith in an effort to agree on a resolution and cure of the breach. If the parties are unable to agree on an informal resolution or cure of the breach, such material failure or refusal shall constitute a Default if:

(a) The Contractor shall have given prior written notice to the City specifying that a particular material failure or refusal to perform exists which will, unless corrected, constitute a Default on the part of the City under this Agreement; and

(b) The City has not corrected such material failure or refusal within thirty (30) days or, if such material failure or refusal is not reasonably capable of being cured within said thirty day period, has not taken reasonable steps to commence to correct the same within thirty days from the date of the notice given pursuant to this section, and thereafter does not diligently continue to take reasonable steps to correct such material failure or refusal.

(2) Under no circumstances, in the event of a City Default, shall the City be liable to Contractor for any consequential or incidental damages, or for any lost revenues or profits of Contractor.

### **5.13 AGREEMENT TRANSFERABLE; CITY'S CONSENT REQUIRED**

A. No Assignment Without Consent. The rights and privileges granted to Contractor by this Agreement shall not be transferred, sold, hypothecated, sublet or assigned, nor shall any of the rights or privileges herein be hypothecated, leased, assigned, sold or transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any Person, except by act of the Contractor with the prior written consent of the City expressed by resolution of the City Council. Any attempt by Contractor to assign this Agreement without the consent of City shall be void.

B. Assignment Defined. The term "assignment" shall include any dissolution, merger, consolidation or other reorganization of the Contractor, or the sale or other transfer of Contractor's capital stock, which results in a change in control.

C. "Change in Control" Defined. "Change in control" shall mean any acquisition of more than fifty percent (50%) of Contractor's voting stock by any Person, or group of Persons acting in concert, who is not as of the date of this Agreement a stockholder in Contractor (or either of them), an immediate family member of such a stockholder, a management employee or principal of Contractor (or either of them), or an Affiliate.

D. Breach. Any assignment occurring without prior written City approval shall constitute a Default under this Agreement.

E. City's Option to Terminate. In the event the Contractor herein attempts to assign this Agreement or any part hereof or any obligation hereunder without the City's consent as required herein, the City shall have the right to elect to terminate this Agreement forthwith, without suit or other proceedings.

F. Involuntary Assignments. Each or any of the following acts shall be considered an involuntary assignment providing the City with the right to elect to terminate the Agreement forthwith, without suit or other proceeding:

(1) If Contractor is or becomes insolvent, or makes an assignment for the benefit of creditors;

(2) If a writ of attachment or execution is levied on this Agreement, or other property of Contractor, such that it would affect Contractor's ability to perform its duties and obligations under this Agreement and such writ or execution is not removed within thirty (30) days; or

(3) If, in any proceeding to which Contractor is a party, a receiver is appointed with authority to take possession of Contractor's property, such that would affect Contractor's ability to perform its duties and obligations under this Agreement.

G. Conditions to Obtaining City's Consent. The City's consent to an assignment may be withheld if, inter alia, the following conditions are not satisfied:

(1) The Contractor shall give the City at least ninety (90) days advance written notice of the Contractor's intent to sell, transfer or assign this Agreement. As part of that notice, the Contractor shall provide to the City the following written information:

(a) The name, address and telephone number of the proposed assignee;

(b) The character of the legal entity owning or controlling the assignee, and the names, addresses and telephone numbers of all principals, partners and/or shareholders thereof, as the case may be; and

(c) A copy of any and all purchase and assignment agreements containing, at a minimum, the terms and conditions of the sale, transfer or assignment of this Agreement; provided, however, that the dollar amount of any financial consideration may be deleted from said copies unless and until said information becomes relevant to the review of Contractor's Collection Rates and Processing Fees under this Agreement; and, provided, further, however, that nothing in this Agreement shall obligate City to treat any of said acquisition costs as an allowable expense of said transferee for rate setting purposes.

(2) The proposed transferee must be shown, by credible and sufficient evidence, to be qualified, by financial condition, background and experience to be able to fully assume and satisfactorily perform all of the Contractor's obligations hereunder, and particularly, to be able to perform under this Agreement in a fashion that will assure the City of complying with AB 939.

(3) The Contractor cannot be in default under any of the material terms and conditions hereof.

(4) The transferee must be willing to, in writing, assume all of the obligations of Contractor hereunder.

#### **5.14 ASSIGNMENT OF AGREEMENT; FEES**

A. **Transfer Fee.** Any application for approval of an assignment of this Agreement shall be made in a manner reasonably prescribed by the Solid Waste Program Manager. The

application shall include a transfer fee in the amount of Fifteen Thousand Dollars (\$15,000), to cover the anticipated cost of all direct administrative expenses of City, including consultants and attorneys, necessary to adequately analyze the application and to reimburse City for all direct and indirect expenses.

B. **Non-Recoverable Cost.** This transfer fee is over and above any Franchise Fees, License Fees or any other fees remitted to the City as specified in this Agreement, and shall not be a recoverable cost for rate setting purposes.

### **5.15 NO SUBCONTRACTING**

Contractor shall not subcontract, assign or delegate to any other Person, the performance of any of Contractor's services, operations, obligations, covenants or duties under this Agreement, unless Contractor has previously obtained the City's written consent thereto.

### **5.16 ENTIRE COMPENSATION**

Contractor shall perform all services, operations, obligations, covenants, duties and all other acts and things required of Contractor under this Agreement, for the Collection Rates described in this Agreement, and shall not be entitled to any other compensation, payments or consideration of any kind except as expressly set forth in this Agreement.

### **5.17 MISCELLANEOUS PROVISIONS**

A. **Force Majeure.** Notwithstanding any other provision herein, Contractor shall not be in Default under this Agreement in the event that the collection services of Contractor are temporarily interrupted or discontinued for reasons outside the reasonable control of the Contractor, including, but not limited to, riots, wars, sabotage, civil disturbances, insurrection, explosion, natural disasters such as floods, earthquakes, landslides and fires, strikes, lockouts and other labor disturbances, excessive snow, acts of God, or other similar or dissimilar events which are beyond the reasonable control of Contractor. Other events do not include the financial inability of the Contractor to perform, or the failure of the Contractor to obtain any necessary permits or licenses from other governmental agencies or to obtain the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the Contractor. In the event a labor disturbance interrupts collection, transportation and/or disposal of Solid Waste by Contractor as required under this Agreement, City may elect to exercise its rights under Article Five, Section 11 of this Agreement.

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

C. Non-Discrimination: The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure the applicants are employed if qualified and that employees are treated during employment, without regard to their race, color, religion, sex or national origin, to the extent required or permitted under Applicable Law.

D. Law to Govern; Venue. The internal laws of the State of California, irrespective of choice of law principles, shall govern this Agreement. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Placer unless otherwise agreed to by both parties in writing. In the event of litigation in a U.S. District Court, exclusive venue shall lie in the Eastern District of California.

E. Fees and Gratuities. Contractor 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 Solid Waste otherwise required to be collected under this Agreement not provided for in this Agreement.

F. Prior Agreements and Amendments. No amendment of this Agreement shall be valid unless it is made in writing and duly executed by the parties. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, and no promises, representations, warranty or covenant not included in this Agreement have been or are relied upon by either party. This Agreement is intended to supersede and replace the Prior Agreements, except as otherwise specifically provided in this Agreement.

G. Compliance With Rocklin Municipal Code. Contractor shall comply with those provisions of the Rocklin Municipal Code which are applicable, and with any and all amendments to such applicable Rocklin Municipal Code provisions during the term of this Agreement, provided that such provisions are not inconsistent with the terms of this Agreement.

H. Prevailing Wages. Contractor shall be knowledgeable regarding all changes in California laws and regulations requiring the payment of prevailing wages and benefits to its employees, and shall pay its employees prevailing wages and benefits if, and to the extent, required by such laws and regulations.

I. Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered or sent by telecopier or United States certified mail, postage prepaid, return receipt requested, addressed as follows:

To City:

Carlos Urrutia, City Manager

3970 Rocklin Road

Rocklin, CA 95677



Facsimile No: (916)625-5561

To Contractor:

John Rowe, General Manager

Auburn City Disposal Service

12305 Shale Ridge Rd.

P.O. Box 6566 Auburn, California 95604

Facsimile No.: (530) 885-1922

The address to which communications may be delivered may be changed from time to time by a notice to the other party in accordance with this section. Notice shall be deemed effective on the date personally served or sent by telecopier or, if mailed, three (3) business days from the date such notice is deposited in the United States mail.

J. Savings Clause and Entirety. If any non-material provision of this 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 Agreement.

K. Exhibits Incorporated. Exhibits A and B are attached hereto and incorporated in this Agreement by reference.

L. Joint Drafting. This Agreement was drafted jointly by the parties to the Agreement.

M. Judicial Review. Nothing in this Agreement shall be construed to prevent either party from seeking redress to the Courts for the purposes of legal review of administrative proceedings in regard to rate setting or City's actions taken pursuant to this Agreement, or for the purpose of interpreting or enforcing the provisions contained in this Agreement.

N. Police Powers. Nothing in this Agreement is intended to or may limit City's authority pursuant to its police power.

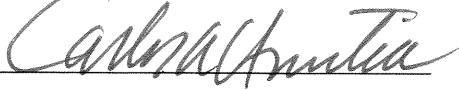
O. Affiliated Entities. Whether or not Contractor shall provide information necessary to satisfy City that the charges made by any Affiliate are reasonable shall be determined as part of the rate review process.

P. Successors and Assigns. Subject to the other terms and conditions herein, this Agreement shall be binding upon and inure to the benefit of the respective successors, permitted assigns, administrators and trustees of the City and Contractor.

Q Survival. All confidentiality and indemnification provisions of this Agreement shall survive the expiration or termination of this Agreement.

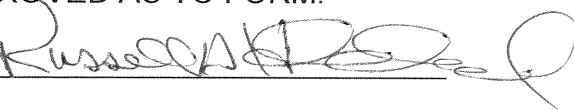
IN WITNESS THEREOF, City and Contractor have executed this Agreement this 10<sup>th</sup> day of March, 2009.

CITY OF ROCKLIN

By: 


Carlos Urrutia, City Manager

APPROVED AS TO FORM:

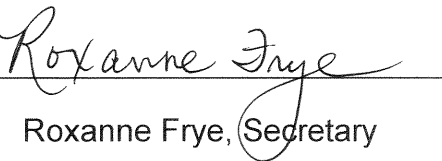
By: 

Russell A. Hildebrand, City Attorney

AUBURN PLACER DISPOSAL SERVICE (Contractor)

By: 

Michael Sangiacomo, President

By: 

Roxanne Frye, Secretary

## EXHIBIT A – COLLECTION RATES

### RESIDENTIAL RATES

### CITY OF ROCKLIN

**EFFECTIVE JULY 1, 2009**

	BASE RATE	DISPOSAL	FRANCHISE FEE	TOTAL
	-----	-----	-----	-----
1 - 32 GALLON CAN**	\$6.45	\$5.29	\$1.30	\$13.04
TOTER ONLY	\$11.12	\$10.58	\$2.41	\$24.11
UNLIMITED TOTERS	\$15.22	\$13.60	\$3.20	\$32.02
SENIOR CITIZEN:				
1 CAN**	\$3.16	\$5.29	\$0.94	\$9.39
TOTER ONLY	\$7.27	\$10.58	\$1.98	\$19.83
UNLIMITED TOTER	\$8.03	\$13.60	\$2.40	\$24.03
EXTRA CHARGE:				
BAG	\$1.95	\$0.63	\$0.29	\$2.87
CAN	\$2.50	\$1.22	\$0.41	\$4.13
TOTER	\$5.83	\$2.44	\$0.92	\$9.19
Extra Toter Rental	\$2.71		\$0.31	
Backyard Gate Fee	\$1.23		\$0.14	\$1.37

\*\* Existing customers only, service is not available to new customers.

**COMMERCIAL RATES****EFFECTIVE JULY 1, 2009****CITY OF ROCKLIN**

SIZE	1 X W	2 X W	3 X W	4 X W	5 X W	6 X W
1 YD	\$56.10	\$92.87	\$129.47	\$166.50	\$203.53	\$254.42
DISPOSAL	22.67	45.34	68.01	90.68	113.34	136.01
FRAN FEE	8.75	15.36	21.94	28.58	35.21	43.38
TOTAL	87.52	153.57	219.42	285.76	352.08	433.81
2 YD	92.74	166.71	240.48	314.47	388.21	485.26
DISPOSAL	45.34	90.68	136.01	181.35	226.69	272.03
FRAN FEE	15.34	28.60	41.83	55.09	68.32	84.14
TOTAL	153.42	285.99	418.32	550.91	683.22	841.43
3 YD	129.62	240.39	351.18	461.90	572.62	715.78
DISPOSAL	68.01	136.01	204.02	272.03	340.03	408.04
FRAN FEE	21.96	41.82	61.69	81.55	101.41	124.87
TOTAL	219.59	418.22	616.89	815.48	1,014.06	1,248.69
4 YD	166.50	314.24	461.82	609.27	757.00	946.26
DISPOSAL	90.68	181.35	272.03	362.70	453.38	544.05
FRAN FEE	28.58	55.07	81.54	108.00	134.49	165.59
TOTAL	285.76	550.66	815.39	1,079.97	1,344.87	1,655.90
5 YD	203.53	342.42	481.33	620.08	759.18	948.98
DISPOSAL	113.34	226.69	340.03	453.38	566.72	680.06
FRAN FEE	35.21	63.23	91.26	119.27	147.32	181.00
TOTAL	352.08	632.34	912.62	1,192.73	1,473.22	1,810.04

6 YD	230.79	391.75	592.03	713.41	912.03	1,140.05
DISPOSAL	136.01	272.03	408.04	544.05	680.06	816.08
FRAN FEE	40.76	73.75	111.12	139.72	176.90	217.35
TOTAL	407.56	737.53	1,111.19	1,397.18	1,768.99	2,173.48
7 YD	258.08	441.08	702.76	806.72	1,064.88	1,331.10
DISPOSAL	158.68	317.36	476.04	634.73	793.41	952.09
FRAN FEE	46.31	84.27	130.98	160.16	206.48	253.69
TOTAL	463.07	842.71	1,309.78	1,601.61	2,064.77	2,536.88

**EFFECTIVE JULY 1, 2009**

**COMMERCIAL CAN RATES**

**CITY OF ROCKLIN**

	<u>1 X W</u>	<u>2 X W</u>	<u>3 X W</u>	<u>4 X W</u>	<u>5 X W</u>
1 CAN	\$14.70	\$29.71	\$44.60	\$59.52	\$74.37
FRAN FEE	1.63	3.30	4.96	6.61	8.26
TOTAL	16.33	33.01	49.56	66.13	82.63
2 CANS	21.58	43.28	64.99	86.71	108.34
FRAN FEE	2.40	4.81	7.22	9.63	12.04
TOTAL	23.98	48.09	72.21	96.34	120.38
3 CANS	28.29	56.94	85.28	113.82	142.30
FRAN FEE	3.14	6.33	9.48	12.65	15.81
TOTAL	31.43	63.27	94.76	126.47	158.11
4 CANS	35.01	69.57	126.08	140.50	175.70
FRAN FEE	3.89	7.73	14.01	15.61	19.52
TOTAL	38.90	77.30	140.09	156.11	195.22
5 CANS	41.77	83.91	126.12	168.18	210.30
FRAN FEE	4.64	9.32	14.01	18.69	23.37
TOTAL	46.41	93.23	140.13	186.87	233.67
6 CANS	48.52	97.47	146.51	195.50	244.28
FRAN FEE	5.39	10.83	16.28	21.72	27.14
TOTAL	53.91	108.30	162.79	217.22	271.42

**EFFECTIVE JULY 1, 2009**

**COMMERCIAL TOTER RATES**

**CITY OF ROCKLIN**

	<u>1 X W</u>	<u>2 X W</u>	<u>3 X W</u>
1 TOTER	\$30.16	\$60.32	\$90.48
FRAN FEE	3.35	6.70	10.05
TOTAL	33.51	67.02	100.53
2 TOTERS	55.25	110.50	165.75
FRAN FEE	6.14	12.28	18.42
TOTAL	61.39	122.78	184.17
3 TOTERS	80.35	160.70	241.06
FRAN FEE	8.93	17.86	26.78
TOTAL	89.28	178.56	267.84
4 TOTERS	105.44	210.89	316.33
FRAN FEE	11.72	23.43	35.15
TOTAL	117.16	234.32	351.48
5 TOTERS	130.52	261.05	391.57
FRAN FEE	14.50	29.01	43.51
TOTAL	145.02	290.06	435.08

**EFFECTIVE JULY 1, 2009**

**COMMERCIAL RATES**

**CITY OF ROCKLIN**

	BASE		FRANCHISE	
	RATE	DISPOSAL	FEE	TOTAL
	-----	-----	-----	-----
<b>EXTRA EMPTIES:</b>				
1 YARD	\$13.70	\$5.23	\$2.10	\$21.03
2 YARD	22.67	\$10.46	3.68	36.81
3 YARD	31.63	\$15.69	5.26	52.58
4 YARD	40.66	\$20.93	6.84	68.43
5 YARD	49.73	\$26.16	8.43	84.32
6 YARD	61.38	\$31.39	10.31	103.08
7 YARD	73.05	\$36.62	12.19	121.86
<b>BIN RENTAL:</b>				
1 YARD	14.85		1.65	16.50
2 YARD	18.45		2.05	20.50
3 YARD	22.18		2.46	24.64
4 YARD	25.85		2.87	28.72
5 YARD	29.52		3.28	32.80
6 YARD	33.26		3.70	36.96
7 YARD	37.01		4.11	41.12



**EFFECTIVE JULY 1, 2009**

**COMMERCIAL DEBRIS BOX RATES**

**CITY OF ROCKLIN**

	BASE RATE	DISPOSAL	FRANCHISE FEE	TOTAL
	-----	-----	-----	-----
15 YARD	\$158.92	\$93.84	\$28.08	\$280.84
20 YARD	173.67	125.12	33.20	331.99
30 YARD	148.24	187.68	37.32	373.24
33 YARD	136.83	206.45	38.14	381.42
40 YARD	113.86	250.24	40.46	404.56
50 YARD	162.41	312.80	52.80	528.01

TEMPORARY BINS

5 YARD	81.42	26.16	11.95	119.53
6 YARD	92.31	31.39	13.74	137.44
7 YARD	103.24	36.62	15.54	155.40

**EFFECTIVE JULY 1, 2009**

**COMMERCIAL C&D BIN RATES**

**CITY OF ROCKLIN**

	BASE RATE	DISPOSAL	FRANCHISE FEE	TOTAL
	-----	-----	-----	-----
7 YARD	\$103.24	\$24.15	\$14.15	\$141.54

Note: Rate subject to minimum of three containers per service.

**EXHIBIT B**

**PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS; that

WHEREAS, the City of Rocklin, California, a municipal corporation (hereinafter called "OBLIGEE") has entered into a contract with Auburn Placer Disposal Service, a California corporation, (hereinafter called "PRINCIPAL"), entitled "Solid Waste Franchise Agreement" (hereinafter called "contract"); and

WHEREAS, said PRINCIPAL is required under the terms of Article Five, Section 10 of said contract to furnish a bond of faithful performance for said contract.

NOW, THEREFORE, we, the PRINCIPAL, and

\_\_\_\_\_, a corporation organized and doing business under the laws of the State of \_\_\_\_\_, and duly licensed and admitted in the State of California for the purpose of making, guaranteeing or becoming sole surety upon bonds required or authorized by the laws of the State of California (hereinafter referred to as "SURETY") are held and firmly bound unto the OBLIGEE, in the penal sum of One Hundred Thousand Dollars (\$100,000) lawful money of the United States, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT if the above bound PRINCIPAL shall well and truly perform, or cause to be performed, each and all of the requirements and obligations of said contract, and any alteration thereof made as therein provided, to be performed by said PRINCIPAL during the term of this bond at the time and in the manner therein specified, then this obligation shall become null and void; otherwise it shall be and remain in full force an effect until PRINCIPAL's obligations during the term of this bond have been satisfied.

And the said SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract thereunder or the specifications accompanying the same shall in any ways affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

The term of this bond shall commence on \_\_\_\_\_; and shall end on \_\_\_\_\_.

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(PRINCIPAL)

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

(SEAL)

\_\_\_\_\_

(SURETY)

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

(ATTORNEY IN FACT)

(SEAL)

(Signatures of Principal and Surety must be acknowledged by Notary Public)

CONTINUATION CERTIFICATE

In consideration of premium charged,

\_\_\_\_\_ hereby continues in force:

Bond No.: \_\_\_\_\_

Dated: \_\_\_\_\_

In the amount of: \_\_\_\_\_ Dollars (\$\_\_\_\_\_)

On behalf of: Auburn Placer Disposal Service, a California corporation as PRINCIPLE

In favor of: City Of Rocklin, California as OBLIGEE

For the period:

Beginning: \_\_\_\_\_

and ending: \_\_\_\_\_ subject to all the terms and conditions

of said bond, PROVIDED that the liability of: \_\_\_\_\_ shall not exceed in the aggregate the amount above written, whether the loss shall have occurred during the term of said bond or during any continuation or continuations thereof, or partly during said term and partly during any continuation or continuations thereof.

Signed and sealed: \_\_\_\_\_ (date) \_\_\_\_\_

(NAME OF SURETY)

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

Attorney in Fact

(ACKNOWLEDGMENT)



## City of Rocklin Implementation Plan – 2022

### Residential Services

- Weekly organics program, including food scraps (stays in grey bin) and green waste to comply with SB 1383
- Street Sweeping
- Spring Cleanup Day
- Paper/Newspaper drop-off
- Residential e-waste service
- Dead animal removal
- One of the most affordable family multiple Toter rates (Toter Plus Service-unlimited) in the area
- “Extra” trash collection via bags for a small fee without a phone call – an uncommon service for automated residential customers

### Commercial Services

- Commercial food waste collection to comply with AB 1826
- Street Sweeping
- Dead animal removal
- Free cardboard service
- Extra service without a phone call
- Free Commercial office paper bins
- Waste Zero Specialist to assist customers with diversion reports, waste analysis, and Cal Recycle support for the city

## City of Rocklin Implementation Plan – 2022

This FIP sets forth the specific implementation details of each service program listed in Article Two, Sections 2.3 and 2.4. The Solid Waste Program Manager shall approve or review and comment on the Implementation Plan within 30 days of receipt. Should the Solid Waste Program Manager does not submit comments within 30 days, the Implementation Plan shall be deemed approved.

### Franchise Implementation Plan Summary

Program	Implementation
<b>Residential Collection Services Single-Family Units</b>	<p><u>Single Toter Fee:</u> Collection is provided once a week, on a regularly scheduled basis for one 96 -gallon toter for a flat fee.</p> <p><u>Extra Bag Fee:</u> During the regularly scheduled single toter pickup, additional bags or bundles left at curbside will be collected for an additional fee.</p> <p><u>Additional Toter Fee:</u> Customer may request an additional toter, for an additional fee.</p> <p><u>Organics:</u> Weekly organics toters collected on the same schedule as garbage; this service is provided and included with the single toter fee. Organics includes green waste (i.e., lawn clippings, leaves, branches) and food scraps (effective Jan. 2022). Up to three green waste toters can be requested by a resident at no additional charge.</p> <p><u>Universal Waste:</u> Customers can schedule universal waste collection through Recology. Residents can contact our customer service center to schedule this, and we will schedule this pick-up to take place on the first available Thursday.</p> <p><u>Unlimited Toter Fee:</u> When a customer applies for this service, they will receive one 96-gallon toter for MSW/Recycle, and one 96-gallon toter for Organics, in addition, customers can place an addition 6 bags out for no additional fee (additional toters are available upon request).</p> <p><u>32-Gallon Can Service:</u> A limited number of customers still use a "personal 32 gallon can." (Less than 20)</p> <p><u>Senior Rate:</u> Residential customers whose head of household or spouse is 62 years of age or older can receive collection service at special "senior citizen" rates.</p> <p><u>Occasional Extra Pickup:</u> During the regularly scheduled 32-gallon can pick up, customers with this service can also place 33- to 45-gallon cans at curbside for an additional fee. (Per RMC</p>

	13.08.060). Recology and City of Rocklin to establish "extra pick-up" fee.
<b>Residential Collection Services Multi-Family Units</b>	<p><u>Solid Waste</u>: Containers are collected not less than once per week, and more frequently if required by RMC 13.08 to handle the waste stream of the premises where the containers are located.</p> <p><u>Organics</u>: Containers are collected not less than once per week, and more frequently if required by RMC 13.08. Organics includes green waste (i.e., lawn clippings, leaves, branches) and food scraps (food scrapes to remain in trash/recycle cart.</p> <p>These services are billed to the owner of the property or individual customer (i.e., apartments/mobile homes-owner, condominiums-individual).</p>
<b>Commercial/Industrial Collection Services</b>	<p><u>Solid Waste</u>: Containers are collected not less than once per week, and more frequently if required to handle the waste stream of the premises where the containers are located.</p> <p><u>Organics</u>: Containers are collected not less than once per week, and more frequently if required by RMC 13.08. Organics includes food scraps, serviced in a 64-gallon cart.</p> <p>These services are billed to the owner of the property or property manager.</p> <p><u>Recyclable Materials and Collection Services (provided at no additional cost to customer or City) are as follows:</u></p> <p><u>Office Paper</u>: Upon request, Recology will provide an appropriately sized bin for the separate collection of office paper to any commercial customer that generates one cubic yard or more of office paper per month.</p> <p>Collection frequency shall be at the discretion of Recology or within 48 hours of notification by the customer that the bin is full. The customer shall be responsible for payment of a one-time set-up charge.</p> <p>Recology will provide the customer a fact sheet describing what types of paper are acceptable in the office paper bin. Recology may discontinue this service to any customer that repeatedly discards unacceptable materials in the office paper bin.</p>



<p><b>Street Sweeping</b></p>	<p><u>Non-Residential Streets</u>: Swept once a week on a reoccurring schedule. Water shall be used to prevent dust.</p> <p><u>Residential Areas</u>: Swept once a month on a reoccurring schedule. Water shall be used to prevent dust.</p> <p><u>Emergency Call-Out Street Sweeping</u>: Recology responds to calls from Public Works (PW) staff after PW staff has assessed the situation and deemed that a sweeper is necessary on a public roadway. Recology will also provide emergency sweeping services for the Parks and Facilities Department (P&amp;F) after P&amp;F staff has assessed the situation for City parks and facilities.</p>
<p><b>Newspaper Bins</b></p>	<p>Public newspaper recycling bins are available to the public located at the City of Rocklin Community Center and Johnson Spring Park. Recology owns and maintains these containers.</p> <p>Additional containers can be requested by City staff for City facilities at no additional charge.</p>
<p><b>Public Facilities</b></p>	<p><u>Corporation Yard</u>: Recology provides bins for green waste, solid waste tire box, e-waste, inert and construction debris. Bins are collected at least once per week (note that Recology has been servicing 2 boxes 5x per week).</p> <p>Solid Waste collection is provided for the following public facilities:</p> <ul style="list-style-type: none"> <li>• City Hall, 3980 Rocklin Road – 1/4YD Fri</li> <li>• Community Center, 5480 Fifth Street – 1/3YD &amp; 1/7YD emptied Mon, Wed, Fri</li> <li>• Twin Oaks Park, 5500 Park Drive – 1/7YD emptied Mon, Wed, Fri</li> <li>• Sunset Pavilion, 2650 Sunset Blvd. 1/6YD Mon – Fri &amp; 1/4YD &amp; 1/7&amp;D Thursday</li> <li>• Train Depot, 3700 Rocklin Road – 1/96G Toter Mon</li> <li>• St. Mary's Church, 5251 Front Street – 6/96G Toters Wed</li> <li>• Lone tree Park, 6101 W Oaks Blvd. – 1/6YD Mon &amp; Thurs</li> <li>• Finn Hall, 4090 Rocklin Road – 1/7YD Tues &amp; Fri</li> <li>• Fire/Police Station, 4060 and 4080 Rocklin Road – 1/7YD each, Tues &amp; Fri</li> <li>• Parks Dept., 1801 Whitney Ranch Pkwy – 1/7YD Fri</li> <li>• Pre-school, 5540 Third Street – 1/2YD Mon &amp; Thurs</li> <li>• Fire Station #25, 2001 Wildcat Blvd. – 1/4YD Fri</li> </ul>

	<ul style="list-style-type: none"> <li>• Fire Station #2, 3401 Crest Drive – 1/5YD Thurs</li> <li>• Park &amp; Ride, Sunset Blvd. &amp; Pebble Creek – I was not able to locate any account on Commercial or Debris Box side</li> <li>• 1900 Wildcat Blvd Margaret Azavedo Park – 1/7YD Mon &amp; Thurs</li> <li>• City of Rocklin Pool 5301 Victory Ln # A – 10/96G Toters Fri</li> <li>• City of Rocklin Quarry Park-Special Events – 1/7YD Tues</li> <li>• City of Rocklin Corp Yard – 1/1YD &amp; 1/5YD Tues</li> </ul>
<b>Consumer Battery Drop-Off</b>	<p>Drop-off locations are available on the City's web site.</p> <p>Recology provides pickup for these batteries on a regular schedule. If the collection containers are full, staff from the location where the collection container is located may call Recology to come and empty the container at no charge.</p>
<b>Emergency Dead Animal Pickup</b>	<p>Recology provides equipment and personnel to pick-up and transport large dead animals. This service shall be provided at a reasonable frequency on an on-call basis.</p>
<b>Annual Reporting/Record Keeping</b>	<p>Recology provides statistics to City staff for the California Integrated Waste Management Board's (CIWMB) Annual Report to justify existing programs and help calculate diversion.</p> <p>Recology will provide information as needed for all current and future State and Federally mandated reporting requirements.</p>
<b>Special Events</b>	<p><u>E-waste/U-waste Collection Days</u>: Recology provides staff and resource to collect and correctly dispose of e-waste material on a quarterly basis. These pick-ups take place on Thursdays of each week.</p> <p><u>City Special Events</u>: Recology provides resources to collect waste for special waste events upon request from the city staff. Recology will need at least 2 weeks' notice to organize resources for these special events.</p> <p><u>Rocklin Clean-Up Day</u>: This is an annual event, usually held in April (Exact date to be determined by City staff).</p> <p><u>Christmas Tree Recycling</u>: Recology will provide boxes for collection and disposing of Christmas trees at designated locations determined by City staff (listed below):</p> <ul style="list-style-type: none"> <li>• Twin Oaks Park, 5500 Park Dr.</li> <li>• Johnson Spring View Park, 5489 5<sup>th</sup> St.</li> </ul>

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<p><u>Non-City Special Events:</u> (i.e., Hot Chili Cool Cars): Recology works directly with these event organizers to handle waste generated from these events</p>
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