

FRANCHISE AGREEMENT

FOR

**THE COLLECTION, TRANSPORTATION, AND DISPOSAL OF REFUSE
AND GARBAGE, INCLUDING THE COLLECTION OF RECYCLABLE
MATERIAL, IN THE CITY OF TRACY**

between

THE CITY OF TRACY

and

TRACY DELTA SOLID WASTE MANAGEMENT, INC.

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**FRANCHISE AGREEMENT FOR THE COLLECTION, TRANSPORTATION
AND DISPOSAL OF REFUSE AND GARBAGE, INCLUDING THE COLLECTION OF
RECYCLABLE MATERIAL, IN THE CITY OF TRACY**

This Franchise Agreement (Agreement) is made and entered into on this the _____ day of _____, 2003, by and between the CITY OF TRACY, a general law city incorporated under the Law of the State of California, hereinafter referred to as "City", and Tracy Delta Solid Waste Management Inc., a California corporation, hereinafter referred to as "Contractor", pursuant to the provisions of Tracy Municipal Code, Chapter 5.20.

WITNESSETH

RECITALS

WHEREAS, in order to protect the public health and safety of the citizens and residents of City, it is necessary to provide for the orderly collection, transportation and disposal of residential, commercial and industrial Refuse, Recyclable Materials and Organic Materials; and

WHEREAS, Contractor presently holds a franchise from the City for such collection, transportation and disposal (such presently held franchise is hereinafter called "Original Franchise"); and

WHEREAS, in view of the length of time since the Original Franchise was granted, and the change of conditions, such as closure of Corral Hollow Sanitary Landfill and opening of the Tracy Material Recovery and Solid Waste Transfer Facility, during that time, and City's updating of its Municipal Code, City desires to reorganize, clarify and update the Original Franchise without changing financial terms to Contractor and with Contractor's agreement and consent; and

WHEREAS, this Agreement and the provisions provided herein are a part of the City's Integrated Waste Management Plan for solid waste management and resource recovery; and

WHEREAS, City's Municipal Code, Chapter 5.20 provides for franchising of these services; and

WHEREAS, the Contractor, through its affiliate Tracy Material Recovery and Solid Waste Transfer, Inc., owns and operates a Materials Recovery Facility (Designated MRF) under contract (MRF Agreement) to the City; and

WHEREAS, the Contractor's performance of the services enumerated in the Agreement and the MRF Agreement are key to the City's ability to meet, and to maintain compliance with, the Year 2000 fifty (50) percent solid waste diversion goal specified in the Integrated Waste Management Act of 1989 (Government Code Section 40000 et seq.) (The "Act"); and

WHEREAS, City Council approved Resolution Number 2001-266 of July 17, 2001, a Resolution of Intent to extend the term of the Original Franchise by adding an additional five

years to the second renewal term, concurrent with making such other changes as are contained in the language of this Agreement.

NOW, THEREFORE, City and Contractor, in consideration of the mutual promises, conditions and covenants contained herein, agree as follows:

SECTION I: DEFINITIONS

This Agreement references the following defined terms. Terms not defined below shall be as defined in the Tracy Municipal Code, Chapter 5.20 and the Act. Should there be an inconsistency in the definition of a term the definition contained in this Agreement, the Act, the Tracy Municipal Code, Chapter 5.20, the Act shall be controlling.

Collection Service Fees "Collection Service Fees" means the various fees paid to Contractor as approved periodically by resolution of the City Council. Except as otherwise explicitly stated, Collection Service Fees constitute the Contractor's sole compensation for provision of services under this Agreement. Each City Council adjustment of the Collection Service Fees constitutes an amendment to this Agreement.

Contractor "Contractor" means Tracy Delta Solid Waste Management, Inc.

Customer Rates, Rates "Customer Rates, "Rates" means the charges approved by resolution of the City Council, and billed to solid waste customers for provision of Franchise Services. Customer Rates are billed by the City acting as an agent of and on behalf of the Contractor.

Designated Disposal Facility "Designated Disposal Facility" or "Disposal Facility" means San Joaquin County's Foothill Sanitary Landfill, or such other landfill in the San Joaquin County's disposal system as designated by the City.

Designated Materials Recovery Facility "Designated Materials Recovery Facility", or "Designated MRF" means the Tracy Material Recovery and Solid Waste Transfer Facility.

Food Waste "Food Waste" means residential or commercial putrescible food waste materials that are purposely set-out for collection separately from Refuse, meeting health and safety provisions of the Tracy Municipal Code, and with the intention that they be composted or taken to animal feed lots.

Franchise Materials "Franchise Materials" means all Refuse, Recyclable Materials, and Organic Materials generated in the City.

Franchise Services "Franchise Services" means all of the rights, duties, obligations of Contractor as specified in this Agreement and as associated with the grant of franchise.

Holidays "Holidays" are defined as New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

Material Recovery Facility Agreement "Material Recovery Facility Agreement", or "MRF Agreement" means the "Service Agreement between the City of Tracy and Tracy Material Recovery and Solid Waste Transfer, Inc.", dated August 1, 1994, as amended August 1, 1999, and as it may be amended in the future.

Organic Materials "Organic Materials" means Yard Waste and Food Waste.

Recyclable Materials, Recyclables "Recyclable Materials" or "Recyclables" means discarded materials from the Customer capable of being Recycled, and that are separated, set aside, handled, packaged, offered, or otherwise Delivered for Collection by a Customer in a manner different from Refuse.

Refuse "Refuse" means waste material intended for disposal and including: (1) all putrescible and nonputrescible wastes, whether in solid or liquid form, except liquid-carried industrial wastes or sewage hauled as an incidental part of septic tank or cesspool-cleaning service; (2) garbage (i.e. putrescible animal, fish, food, fowl, fruit or vegetable matter, or any thereof, resulting from the preparation, storage, handling or consumption of such substances); (3) rubbish (such as printed materials, paper, pasteboard, rags, straw, used and discarded clothing, packaging materials, ashes, floor sweepings, glass, and other waste materials).

Solid Waste Coordinator "Solid Waste Coordinator" is the City Manager, or his/her designee responsible for managing the Agreement on behalf of the City.

Solid Waste Enterprise Fund "Solid Waste Enterprise Fund" means the designated City fund used for the collection of solid waste rate revenues, paying City administrative costs related to solid waste services, and for compensating the contractor for collection costs.

Yard Waste "Yard Waste" means biodegradable materials such as leaves, grass, weeds, and wood materials from trees and shrubs set-out for collection separately from Refuse and that fit within a Yard Waste toter, provided that larger items such as tree stumps and intact dead trees may not be set-out for regular yard waste collection service.

SECTION II: TERM

A. BASE TERM AND RENEWAL TERMS

The base term for this Agreement shall be for the period from the date first above written through March 8, 2003. However, as provided in City Council Resolution Number 2001-266 of July 17, 2001, Contractor may at its option renew this Agreement for two additional terms ("renewal terms"), with the first being of ten-years duration and the second of fifteen-years duration. In entering into this Agreement, the Contractor gives notice of its intention to exercise the first renewal term, and the City hereby grants the extension, pursuant to such notice, of ten (10) years to March 8, 2013. Contractor shall renew for the second renewal term by giving notice thereof no sooner than five (5) years prior to, nor later than eighteen (18) months prior to the expiration of each renewal term.

B. ADDITIONAL EXTENSIONS

Following the two extension terms described in Section II(A) above, the City, at its option, may renew the Agreement for additional ten (10) year increments if it finds such extensions to be in the public's best interest, and in conjunction with any necessary and beneficial revisions to the Agreement. The City may at its sole discretion prior to granting any additional renewal, conduct a rate review and/or compare rates and services with those of other communities to ensure that the rates are reasonable for the services provided.

C. AGREEMENT TRANSITION EXTENSION

By giving written notice ninety (90) days prior to the effective date of termination of this Agreement, City, at its sole discretion, may require Contractor to continue to provide Franchise Services under the terms of this Agreement for up to one hundred and eighty (180) days following the effective date of termination. The purpose of such an extension is to ensure uninterrupted service in the event of transition to a successor contractor and/or ongoing contract renegotiations with present Contractor that City anticipates may not be concluded by the effective date of termination.

SECTION III: CITY'S EXCLUSIVE GRANT OF FRANCHISE

A. SERVICES PROVIDED

Contractor shall have within the City limits, subject to the limitations contained in this Agreement, the exclusive right and duty to collect and transport all Refuse, Recyclable Materials, Food Waste, and Organic Materials, to the Designated MRF, including the full and exclusive right to collect, process and merchandise all recyclable or salvageable material collected in the City's curbside recycling program as set forth in Tracy Municipal Code Chapter 5.20 and authorized commercial and industrial recycling programs. This does not prohibit businesses and industry from marketing any recyclable or salvageable material other than food waste that has been segregated by such business or industry, directly to Contractor, processors or manufacturers, provided that such marketing is in fact a true sale of such material.

B. COMPENSATION

Except as otherwise specified in this Agreement, the Collection Service Fees are Contractor's sole compensation for provision of the services.

C. EXCEPTIONS TO GRANT OF FRANCHISE

1. Exceptions

The rights and privileges herein granted to Contractor shall in no way prevent or restrict the City or other parties from any of the following:

- a. Private parties from donating or selling a recyclable or salvageable material other than food waste that has been generated and segregated by such party from other materials to any party of their choice, provided that such sale or donation is a true sale or donation.

- b. Allowing the self-hauling and disposal of discarded materials, including construction and demolition debris, grass clippings, prunings and other discarded materials by the generator of the material(s), as long as:
 - (i) The discarded material(s) are generated from non-commercial or non-industrial activities on the generator's own property, or are generated directly as a result of the work of specialized and distinct business operations whose primary business is not janitorial, cleaning, or waste disposal, transportation or collection, including, without limitation, various contractors such as, landscapers, tree trimmers or gardeners.
 - (ii) Any self-hauling related to a commercial or industrial activity, or related to a service provided to a third-party, is done as an integral part of the commercial or industrial activity by the generator of the waste material, or incidental to the primary work performed by a contractor as that term is described in this paragraph, conforming with usual practices for such work in other communities that have exclusive Refuse collection franchises.
 - (iii) The self-hauling and disposal is done using the generator's, or the contractor's own personnel and vehicles. Self-hauling excludes use of, or subcontracting to, independent haulers, third parties, affiliates, or subsidiaries.
- c. Delivery of self-haul materials directly to a transfer station, materials recovery facility, or disposal facility in a manner consistent with City ordinances and codes and other applicable laws; provided, however, that this provision does not create an exemption from any law requiring payment for Collection services, whether those services are utilized or not.
- d. Permitting other entities to haul and dispose of septic tank, sand trap and grease trap contents.
- e. Providing the collection of Refuse in connection with the City's street cleaning service.
- f. Permitting other entities to carry out the City's annual weed abatement program.
- g. Discarded material from the City's tree trimming program, and from the City's leaf collection and/or Spring and Fall clean-ups if conducted by City crews as provided in Sections IV(I) and IV(J).
- h. Provision of any other service that is not specified in this Agreement and that normally would be considered to fall within Franchise Services, and that the Contractor explicitly waives its right to provide, by written notice to the City.

2. Use of City Forces

The provisions of this Agreement shall not preclude or prohibit the City utilizing its own forces, or any officer or employer thereof, from collecting, removing, and disposing of Refuse or Yard Waste from the City's facilities, or to preclude or prohibit the State, utilizing its own forces, or any governmental subdivision of the State, utilizing its own forces, or any employee of either, from collecting, removing, and disposing of Refuse or Yard Waste from the State's, or governmental subdivision's, facilities respectively.

D. CITY BILLING SERVICES

City shall provide all services related to billing and collecting Customer Rate revenues, and agrees to act as the Contractor's agent in this regard.

E. FRANCHISE FEE

In consideration of the franchise provided for in this Agreement, the Contractor agrees that the City is due a franchise fee. The franchise fee shall be no greater than ten (10%) percent of gross Customer Rate revenues, and may be modified by the City Council. Upon collecting Rate revenue, City shall retain the franchise fee.

F. TITLE TO COLLECTED MATERIALS

It is expressly understood that all Franchise Materials become the property of Contractor at the point of collection, but are subject to delivery to the Designated MRF, or to any other City-designated facility(ies).

G. EMERGENCY SERVICES

Notwithstanding the provisions of Section IV specifying Contractor scope of Franchise Services, in the event of a declared emergency, City reserves the right to use City staff, agents, contractors, and/or subcontractors as necessary to clear debris from the City. Contractor agrees to not contest City's use of other parties to collect, transport, and dispose of any debris resulting from such emergency. In the event of a declared emergency, Contractor shall upon notice from the City make all reasonable effort to provide vehicles and crews to assist in clearing and/or transporting debris. Contractor shall be compensated for the emergency services as a change in scope as provided in Section IV(Q).

SECTION IV : FRANCHISE SERVICES

A. GENERAL

1. General Services

Contractor shall furnish all materials and equipment required for the orderly collection of Refuse, Recyclables, and Yard Waste, on a regularly scheduled basis from all residential, commercial and industrial customers within the City limits and transport the Refuse to the Designated MRF and the residual waste to the Designated Disposal Facility.

2. Governing Statute and Regulation

Contractor's services shall be subject to the terms of this Agreement, the Tracy Municipal Code, and all other county, state and federal laws pertaining to the collection and transportation of Refuse to which Contractor is subject.

3. Services to the Disabled

Contractor shall provide special service to disabled households as provided in Section IV(B)2.d.

B. REFUSE COLLECTION SERVICES

1. General

Contractor shall provide Refuse service to residential, commercial and industrial customers using cans, carts, totes, bins, hoppers, boxes and compactors in the sizes and frequencies for which there are approved Customer Rates. Contractor shall maintain sufficient personnel, materials and equipment to provide such services.

2. Residential Customers

- a. Refuse shall be collected no less frequently than once each calendar week, with collections from a given residential customer scheduled to occur on the same day or days each week.
- b. Except for Holidays and emergency situations, all residential collections shall be made on Mondays through Fridays. Hours of collection are restricted from 4:00 a.m. to 6:00 p.m., except as may be otherwise agreed to by City and Contractor.
- c. Contractor shall provide one sixty (60) gallon semi-automated Refuse toter for the use of each residential living unit in the City. All toters shall remain the property of the Contractor. The Contractor shall weekly collect and dispose of garbage from each toter placed at the curbside in front of each such residence.
- d. Contractor, at the request of the customer, shall wheel out and return toter(s) used by disabled households. There will be no additional charge for such service. For the purposes of this Section, "disabled households" shall mean those households composed entirely of persons who, by reason of disability, are unable to wheel carts to the curbside for weekly collection.
- e. Contractor, upon the request of a resident, shall provide additional sixty (60) or ninety (90) gallon cart for residential Refuse use. Contractor will notify City when additional carts are provided to residents. Customer will be charged an appropriate approved Customer Rate.

3. Commercial and Industrial Customers

- a. Refuse shall be collected no less frequently than required by the Tracy Municipal Code. Commercial and industrial services for putrescible wastes shall be no less than weekly, unless otherwise specified in the Tracy Municipal Code.
- b. Commercial and industrial collections will normally be conducted Monday through Friday but are also allowed on Saturdays and Sundays.
- c. Contractor shall provide the full range of normally available sizes and types of Refuse containers as required by the individual commercial and industrial customer, and for which there is an approved Customer Rate.
- d. Contractor shall repair or replace at no additional cost, any container which is damaged and where such damage is not due to customer misuse or negligence. If the damage is determined to be due to customer misuse or negligence, the customer shall reimburse the contractor for the cost of repairs or current value of the container.

C. RECYCLABLE MATERIALS COLLECTION SERVICES

1. Residential Customers

- a. Contractor shall provide one recycling container to each residential unit that utilizes a garbage toter. Contractor shall replace or repair at no additional cost to the customer, any container which is lost or damaged where such loss or damage is not due to customer misuse or negligence.

- b. Contractor will collect curbside Recyclable Material on the same day as Garbage is collected from residential customers, or as otherwise agreed by City and Contractors.
- c. Contractor shall develop and implement a single-stream Collection of residential Recyclables in accordance with the Contractor's Single-Stream Recycling Plan as described in Section IV(D).

2. Commercial and Industrial Customers

- a. Collection of Recyclables from commercial and industrial customers will be determined by mutual agreement or on an as-needed basis, and in accordance with the Contractor's Multi-Family and Commercial Recycling Plan described in Section IV(D).
- b. Contractor shall work with City and commercial and industrial entities to target and divert Recyclables from their commercial and industrial waste streams, as provided in the Contractor's Multi-Family and Commercial Recycling Plan described in Section IV(D).
- c. Contractor shall work with City to establish recycling programs for apartment and condominium complexes as provided in the Contractor's Multi-Family and Commercial Recycling Plan contained in Section IV(D).

3. Other Services

- a. City and Contractor will from time to time determine those Recyclable Materials which will be set out and collected as part of the curbside recycling program as justified by market conditions or governmental mandates. The program will initially include the collection of aluminum, tin and steel cans, glass, PET plastics, newspapers and cardboard, unless modified by the Parties due to a material change in the ability to reuse such materials. Such modification may be by a separate written agreement between City and Contractor. Contractor will maintain awareness of new developments in recycling technology and will bring to City's attention possible additions to the list of Recyclable Materials when such additions are technically and financially feasible.
- b. Contractor will promote participation in recycling activities throughout the community by advertising and promoting those recycling activities. Contractor will participate with City in providing educational material to the public. Costs incurred by Contractor under this Section shall be considered a cost component to be considered under Section VI(B) of this Agreement.

D. SINGLE-STREAM, MULTI-FAMILY AND COMMERCIAL RECYCLING PLANS

1. Plan Requirements

As a condition to effectiveness of this Agreement, the Contractor has submitted and the City has reviewed and accepted a plan(s) addressing:

- a. Single-stream recycling for residential customers. The term "single-stream" is used in this paragraph to describe the collection of all recyclables placed by customers in a single container.

- b. Enhanced recycling services for multi-family customers.
- c. Enhanced recycling services for and commercial customers.
- d. Each plan or plan component includes a schedule for accomplishing recycling.
- e. The Plan may be amended as provided in writing by the City.

2. Proposed Fees

Contractor may propose fees to be considered by the City Council of City, which may determine in its sole discretion if such fees are necessary.

E. YARD WASTE COLLECTION SERVICES

1. Residential Customers

- a. Contractor shall collect Yard Waste on a bi-weekly basis from all residential service customers using totes. Contractor, upon the request of a resident, shall provide an additional ninety (90) gallon tote for residential Yard Waste use. City will notify Contractor when additional carts are requested by residents. Customer will be charged an appropriate approved Customer Rate.
- b. As part of Yard Waste services, contractor will collect Christmas trees placed at the curb on regular collection days. Contractor shall provide this pick-up service on the regular day of collection service each year from December 26 through January 15. The Contractor shall transport all collected Christmas trees to the Designated MRF for chipping or composting.

2. Commercial and Industrial Customers

Contractor shall collect Yard Waste from commercial and industrial businesses as requested.

3. Other Services

Contractor shall provide such other Organic Materials collection services, including Food Waste collection as may be required by the City, and as compensated through a change in scope as provided in Section IV(Q).

F. TRANSPORT AND DISPOSAL OF REFUSE

Contractor shall transport all Refuse to the Designated MRF, and residual waste to the Designated Disposal Facility(ies) as directed, and is solely responsible for all collection and transport costs, subject to the Contractor's being compensated for any increased costs through the rate making process pursuant to Section VI of this Franchise Agreement. Contractor is not responsible for disposal facility tipping fees.

G. TRANSPORT, PROCESSING AND MARKETING OF RECYCLABLE MATERIALS

The Contractor shall transport all Recyclable Materials collected within this Franchise to the Designated MRF, and is solely responsible for all collection and transport costs.

H. TRANSPORT AND PROCESSING OF YARD WASTE AND COMPOST

Contractor shall transport all Yard Waste to the Designated MRF for use as compost, mulch, alternative daily cover, or other forms of beneficial reuse, and is solely responsible for all collection and transport costs.

I. LEAF COLLECTION

Contractor shall collect leaves that are piled on City streets during those fall/winter months designated by City (normally the last weeks of November through the first weeks of January). Leaves shall normally be composted as directed by City. Contractor shall submit to City a leaf pickup plan and rate schedule by October 1st of each year. City shall review the leaf pick up plan and approve or mutually modify the plan by November 1st. Contractor shall be paid for such services in addition to the Collection Services Fees. City shall not contract these services to any party other than the Contractor. However, these services may at the sole discretion of the City, and for any period of time be provided using City crews and equipment.

J. SPRING AND FALL CLEANUPS

Contractor shall be solely responsible for the annual Spring and Fall Clean-up events. When authorized by City Council, the Clean-up events will generally be held in April and October. Contractor shall submit to City a Spring and Fall Clean-up plan, and rate schedule by March 1st each year. City shall review and approve or mutually modify the plan and schedule by March 21st. Contractor shall be paid for such services in addition to the Collection Services Fees. City shall not contract these services to any party other than the Contractor. However, these services may at the sole discretion of the City, and for any period of time be provided using City crews and equipment.

K. SERVICE AT SPECIAL EVENTS

Contractor has traditionally donated services for various City and community events. Contractor may continue to donate services for such events, in Contractors' sole discretion. Contractor shall each February 1 provide City a listing of the entities receiving this service over the prior calendar year, and the level of service received.

L. VEHICLES AND EQUIPMENT

1. Ownership

All vehicles and equipment used by Contractor to perform the services required under this Agreement shall be wholly owned or leased by Contractor. All vehicles and equipment used in performing this Agreement shall bear lettering or a clearly readable sign containing Contractor's name, office telephone number and the number assigned to each vehicle in letters in compliance with California Vehicle Code requirements. All vehicles and equipment shall conform to the requirements of all applicable county, state and federal laws and City ordinances, and all limitations in any licenses or permits under which Contractor operates.

2. Maintenance

Each vehicle and piece of equipment shall be maintained in a clean and sanitary condition, uniformly painted. All Refuse collection vehicles shall be constructed, maintained and operated so that liquids or Refuse will not blow, fall, sift or leak. Contractor shall pick up any Refuse dropped or deposited in the process of collecting or transporting it to the Designated Disposal Facility(ies). Each vehicle shall undergo an annual mechanical inspection by the San Joaquin County Public Health Services, and inspection certificates shall be maintained on file at Contractor's office. Equipment shall be maintained to comply with any applicable noise limits contained in the California Vehicle Code.

3. Removal from Service

Should City at any time notify Contractor that any vehicle or piece of equipment is not in compliance with those standards, Contractor will remove the particular vehicle or equipment from service until it has been inspected and approved for service by the San Joaquin County Public Health Services or by such other public entity as is charged with such vehicle inspection responsibilities. In no event shall such a removal of vehicles or equipment from service relieve Contractor of its obligations to perform the services required under this Agreement.

4. Storage

When not in use, all vehicles and equipment shall be stored indoors or in a fenced yard in compliance with all laws relating to the parking or storage of vehicles. No vehicle shall be parked with a full or partial load of Refuse for more than 24 hours, or 60 hours over a weekend.

M. GROWTH IN ACCOUNTS

Contractor shall provide Franchise Service to all Customers within the City requiring service during the term and shall be compensated on a per-account basis through the then-effective Collection Service Fees.

N. GROWTH IN CITY SERVICES

Contractor shall provide all City services and collection of public containers as specified in the Agreement, including as needed to address growth in materials generated within City, permanent or seasonal changes in collection frequency as may be directed by the City, and any new collection sites or locations for City buildings and for public containers that may be added in the future.

O. ANNEXATIONS

City shall promptly provide written notice to Contractor regarding any geographic area that has been or that will be annexed to the City. Once such notice is given, the provisions of the Agreement including all the express or implied rights and responsibilities shall apply within the area of annexation. Contractor shall provide Franchise Services within the annexed area within five (5) working days of customers moving into residences or businesses.

P. REQUIRED PERMITS

Contractor will have and maintain a valid City Business License throughout the term of this Agreement. Contractor and any sub-contractors it employs shall obtain any legally required permits or licenses for the lawful performance of this Agreement.

Q. CHANGES IN SCOPE

City reserves the right to direct modifications in the scope of operations of this Agreement due to changing community needs, and/or new developments in the field of waste collection, diversion and/or disposal, upon consultation with Contractors, and with appropriate adjustments to compensation paid Contractors. Such modifications shall affect only Scope of Operations, and not the term, exclusive nature, or other provisions of this Agreement.

R. OTHER SERVICE-RELATED PROVISIONS

1. Holiday Collection

When a scheduled collection day falls on a Holiday, Contractor may either collect on the Holiday, or, at its option and upon notice to its customers by publication in the Tracy Press and/or other local newspaper of general circulation, delay collection schedules one day.

2. Handling of Containers

Contractor shall leave all customer containers in an upright position in the location at which they were found prior to collection. Contractor shall be liable for damage to customer containers or private property occurring as the result of its own negligence, but not otherwise.

3. Residential Routes; Notices

Contractor shall provide City with a detailed map of residential collection routes and a residential collection schedule. In the event Contractor changes its residential collection schedule, Contractor shall notify all affected residential customers ten (10) days in advance by prepaid United States mail or by direct distribution of notice to the premises.

4. Justifiable Cause for Refusal of Service

Contractor shall be justified in refusing service to any customer who fails to comply with all provisions of the Tracy Municipal Code for the handling of a specific Franchise Material.

5. Violation Notices

If Contractor, for justifiable cause, does not collect Franchise Materials from a customer, Contractor shall give the customer notice of the reasons for refusing to collect, citing the appropriate reasons therefore. The notice shall be given by means of a tag no smaller than 3" x 7" securely fastened to the container or article not collected. Contractor shall maintain a record of all notices given pursuant to this Section and on a monthly basis provide a copy of all such new records to the Solid Waste Coordinator.

6. Uniformed Collectors

All persons employed by Contractor to collect Franchise Materials shall be required to wear clean uniforms when on duty, including coveralls or trousers, shirts and jackets. Shirts and jackets shall bear a distinctive logo identifying the wearer as an employee of Contractor.

SECTION V: OTHER FRANCHISE SERVICES

A. CONSUMER INFORMATION AND PUBLIC EDUCATION RESPONSIBILITIES

Contractor acknowledges the importance throughout the term of developing, and maintaining consistent effort in conducting the consumer information and public education activities, and in particular the role of information and education in successful implementation of enhanced single-family, multi-family and commercial recycling collection services, and Yard Waste collection services. Contractor's information and education efforts are also crucial in ensuring that customers are fully aware of all services to which they are entitled as specified in this Agreement, including but not limited to Christmas tree collection, and side-yard service for the disabled. Contractor further acknowledges the important role of the Contractor's consumer information and public education efforts through the responsibilities delegated to it under this Agreement as the primary party in aiding the City to reach and maintain an AB

939 diversion level of fifty (50) percent or above. The public education plan described in Section V(B) specifies the minimum standards for Contractor performance of these activities in a proactive, timely, and professional manner.

B. CONSUMER INFORMATION AND PUBLIC EDUCATION PLAN

As a condition to the effectiveness of this Agreement, the Contractor's Consumer Information and Public Education Plan will be submitted to, and approved by, the City. The Plan may be amended as provided in writing by the City. The Plan includes a schedule of events and actions for public education and consumer information.

C. CUSTOMER SERVICE AND ACCESSIBILITY

Contractor acknowledges that the City expects provision by Contractor of highly professional and courteous customer service. Contractor shall maintain a local telephone number for customer service. Contractor shall install and maintain telephone equipment, and have available service representatives sufficient to handle the volume of calls typically experienced on the busiest days. Dedicated customer service representatives shall be available to answer calls from 7 a.m. to 5 p.m., Monday through Friday. Contractor shall also maintain an after-hours telephone message system to take calls received other than during normal business hours. Contractor shall provide the City a means of contacting a representative of the Contractor on a 24-hour basis.

D. CONTRACTOR'S OFFICE

Contractor shall maintain an office at a fixed location within City limits, and shall maintain telephone services there in Contractor's name. Contractor shall staff the office from the hours of 7:00 a.m. to 5:00 p.m. on each day collections are scheduled, except weekends and Holidays, and shall staff it with a person to receive complaints and answer inquiries during office hours.

E. SERVICE COMPLAINTS AND RESOLUTION

1. Complaint Log

The City expects customers to receive rapid and thorough resolution of any complaints. Contractor shall maintain a written log of all oral and written service complaints registered with Contractor from customers within the city ("complaint log"). Contractor shall record in the complaint log all written and oral complaints, noting the name and address of complainant, date and time of complaint, nature of complaint, identity of supervisor, and nature and date of resolution. Such log shall be kept so that it conveniently may be inspected by representatives of City upon request. Such log shall be retained by Contractor for three (3) years following the end of the year in which the complaint was made. Upon five (5) working days notice, Contractor shall make customer logs available for City review.

2. Complaint Resolution

Contractor shall respond to all customer complaints within twenty-four (24) hours, Sundays and Holidays excluded. Contractor shall make best efforts to resolve all complaints within ten (10) working days, with the following exceptions:

- a. If a complaint involves a missed pick-up of Franchise Materials provided by the customer for Collection in accordance with the Tracy Municipal Code, Contractor shall collect the Franchise Materials in question within 24 hours of the complaint.
- b. If a complaint involves a failure to collect Franchise Materials from a container provided for City services, or emptying of a public container in order to avoid overflow, Contractor shall collect the Franchise Materials in question within twenty-four (24) hours after receiving the complaint, including weekends and Holidays.

F. INFORMATION MANAGEMENT SYSTEMS

Contractor shall maintain such Information Management Systems as are needed to collect, store, and organize operational and financial data, to verify accuracy of customers receiving service with City lists of billed customers, and to produce the reports and plans as specified in this Agreement. All data shall be backed up so as to ensure no loss of data due to computer failure.

G. HAZARDOUS WASTE

1. General

If Contractor determines that waste placed in any container for collection or delivered to any facility is hazardous, medical or infectious waste, or other waste that may not legally be disposed of at a Disposal Facility or presents a hazard to Contractor's employees, Contractor shall have the right to refuse to accept such waste. The Customer shall be contacted by Contractor and requested to arrange proper disposal. If the Customer cannot be reached immediately, Contractor staff shall, prior to leaving the premises, leave a tag indicating the reason for refusing to collect the waste.

2. Hazardous Waste Disposal Responsibility

If hazardous waste is collected by Contractor during Contractor's normal collection service and the Customer cannot be identified or fails to remove the waste after being requested to do so, Contractor shall arrange for its proper disposal. Contractor shall make a good faith effort to recover the cost of proper disposal from the customer, and the cost of this effort as well as the cost of disposal shall be chargeable to that individual or entity. If the Customer cannot be identified, or such costs cannot be collected from Customers, Contractor shall report the cost of proper disposal to City. Contractor shall report any such disposal cost in writing to the City within forty-eight (48) hours of the date and time incurred. City shall reimburse Contractor for such cost within thirty (30) days of such report.

SECTION VI: RATE SETTING AND CONTRACTOR COMPENSATION

A. RATE SETTING

The Customer Rates shall periodically be set by resolution of the City Council as needed to ensure sufficient funding of the Solid Waste Enterprise Fund for the City to meet all of its financial and other obligations under this Franchise Agreement. Customer Rates shall be sufficient to include:

1. The Contractor's Collection Service Fees.
2. The expenses of disposal, which shall be paid directly by the City.
3. The franchise fee as provided in Section III(E).
4. Such other expenses and reserves as are determined to be necessary by the City.

B. COMPENSATION

1. Adjusting Compensation

The compensation to Contractor for the successful fulfillment of this Agreement shall be the Collection Service Fees as set by resolution of the City Council in accordance with the Tracy Municipal Code. Contractor will provide justification with cost components that produce the requested compensation, and in a format requested by and/or approved by the City. City Council will review the cost components and the requested compensation and the resulting monthly charges for Tracy customers. Compensation established shall be reviewed annually during the month of September and, if appropriate, adjustments will be effective on or after January 1st, each year. In the determination of any appropriate compensation adjustments, the City Council may consider, but will not be limited to, the change in the Consumer Price Index and/or any other indicators deemed appropriate for the past twelve months, and/or any extraordinary increases or decreases in the cost of equipment, insurance, fuel, federal, state and/or local government taxes, fees, assessments or other special costs. Contractor may at any time apply to the City for consideration of a compensation adjustment due to such extraordinary increases or decreases in cost. Contractor agrees that no compensation increase will be considered by the City Council until Contractor has submitted to City audited financial statements as required by Section VII(A) below.

2. Compensation Related To Change In Scope

If City requires modification of operations to meet the community's changing needs as provided in Section IV(Q) the Contractor shall be entitled to reasonable compensation for any increased costs directly resulting from the modification of operations.

C. CONTRACTOR REIMBURSEMENT

1. Remittance

City shall remit to Contractor, by the tenth working day of each month the Collection Service Fees due the Contractor for the collection and transportation of all residential, commercial and industrial Franchise Materials, for the prior month.

2. City Billing Records

City hereby agrees to keep and maintain proper records of Customer Rate collections and to make such records available to Contractor or its authorized agent for audit upon ten (10) days written notice to City. Such audit would be conducted in City's Finance Department.

3. Tipping Fee Payments

City shall pay to San Joaquin County or other entity the authorized total tipping fee due for the acceptance of Refuse at the Designated Disposal Facility(ies).

4. Contractor Billing for Other Services

Contractor shall submit direct billings for Spring and Fall Clean-Ups at the conclusion of each event in accordance with Section IV(J). Leaf pick up and removal may be billed monthly until the end of the leaf removal season Section IV(I). Other special programs, when authorized, will be billed in an appropriate manner by mutual written agreement.

SECTION VII: REPORTING REQUIREMENTS

A. FINANCIAL REPORTS TO THE CITY

1. Contractor Accounting Records

Contractor agrees, at any time deemed necessary by the City Manager, to make available to the City all accounting records that pertain to any portion of the Contractor's operations within the scope of this Agreement.

2. Audited Financial Statements

Annually, Contractor shall provide City with a minimum of two (2) copies of Contractor's audited financial statements prepared by an independent Certified Public Accountant in conformance with generally accepted accounting principles. Such statements shall be provided to City within four (4) months after the close of the Contractor's fiscal year. The City reserves the right to request any additional documentation, itemization or detail to verify any amounts reported in the annual or special financial statements.

B. MONTHLY SERVICE, MONTHLY VARIABLE AND SPECIAL CHARGES REPORT

1. Customer Lists

The City's Finance Department maintains customer lists of residential, commercial and industrial customers receiving regular service. Contractor will provide all changes originating through the Contractor's office to the City within five (5) working days of the action date. City will notify Contractor within five (5) working days when a change in service originates at the City's Finance Department.

2. Billing of One-Time Charges

Contractor will provide to City by the fifth day of each month residential, commercial and industrial charges for one-time services provided to customers that are different from the previous month and those customers that by normal operations have services that vary from month to month. These charges will include all the necessary information for the City to perform the billing service for all City customers serviced by the Contractor.

3. Contractor Certification of Billing Listings

Contractor shall be responsible to provide the correct billing information and verify the billing by reviewing the billing listings provided by the City's Finance Department. Contractor will be required to certify that the listings provided by the City's Finance Department correctly reflects the billing for services provided by Contractor.

4. Customer Database

City and Contractor shall each cooperate with the other to establish and maintain at both offices a current database of all residential, commercial and industrial customers served by Contractor. This database will contain name, address, account number and all services received, i.e. number and sizes of garbage containers (toters, hoppers, boxes, compactors, recycling and yard waste containers when authorized). A target date of July 1, 2005 is established for City and Contractor to have corresponding and accurate information to ensure that proper billings are being issued to City customers by the City. City and Contractor shall exchange listings at least quarterly in a format acceptable to both the City and Contractor. Formats should include variable listing sequences for cross-reference, i.e. by account number, type and category of service, address and name.

C. ADDITIONAL REPORTING

1. Residential Programs

Contractor shall maintain accurate records of all material received from the curbside recycling and yard waste programs. The amount of material collected shall be provided to City by the 15th of each month in the form of a monthly report, broken down by type, and weight of the material.

2. Commercial Programs

Contractor shall maintain accurate records of all Recyclable Material received or collected from commercial, industrial, non-profit organizations and any others.

Contractor shall provide to City by the 15th of each month the amount of material received from these entities.

3. Customer Complaints

Contractor shall include in each monthly report a brief summary of customer complaints for the previous month with an explanation of how each was resolved.

4. Tipping Tickets

Contractor shall provide to City by the tenth of each month, tipping tickets for Refuse taken to the Designated MRF, Designated Disposal Facility(ies), or other approved facility. Tipping tickets will be in numerical order in residential, commercial and industrial groupings. A computer listing will accompany the tipping tickets. The listing will include as a minimum: date, ticket number, measurements by weight and dollar amount. Totals will be provided for total weight. Upon request of City, information required herein may be submitted by e-mail.

SECTION VIII: INSURANCE

A. COVERAGE REQUIREMENTS

Without limiting Contractor's obligations arising under subparagraph VIII(E) "Indemnification" below, Contractor shall not begin work under this Agreement until it obtains commercial general liability and property damage insurance required under this Section. The insurance shall cover Contractor, its agents, representatives and employees in connection with the performance of work under this Agreement, and shall be maintained throughout the term of this agreement. Coverage may be provided through one or more policies. The Contractor's coverage shall be primary in responding to claims against the City or Contractor under this Agreement and shall be endorsed to name the City, its officers, employees and volunteers as additional insureds.

Insurance coverage shall be as follows:

1. Vehicle Liability Insurance in the amount of five million dollars (\$5,000,000) combined single limit bodily injury and property damage for any auto. This coverage shall be at least as broad as the Insurance Service Office Form No. CA 00 01 12 90. This condition shall be endorsed on the Contractor's Vehicle Liability Insurance policy by naming the City as an additional insured.
2. Commercial General Liability and Property Damage Insurance, insuring City, its elected and appointed officers, agents, and employees from claims for damages for personal injury, including death, as well as from claims for property damage which may arise from Contractor actions under this Agreement, whether or not done by Contractor or anyone directly or indirectly employed by Contractor. Such insurance shall have a combined single limit of not less than five million dollars (\$5,000,000) combined single limit bodily injury and property damage. This coverage shall be at least as broad as the Insurance Service Office Form No. CG 00 01 11 88. This condition shall be endorsed on the Contractor's General Liability and Property Damage Insurance policies by naming the City as an additional insured.

3. Workers' Compensation Insurance for all Contractor's employees shall be maintained as required by the State of California in not less than the statutory limits. If the Contractor is a qualified self-insured for workers' compensation, the workers' compensation insurance shall provide a limit of liability of not less than ten million dollars (\$10,000,000) and Employer's liability of not less than one million dollars (\$1,000,000) per occurrence.

B. DEDUCTIBILITY LIMITS

Deductibility Limits for policies referred to herein shall not exceed \$25,000 per occurrence. The amount of the deductible shall be identified on the policy endorsements. Any deductible shall be the responsibility of Contractor.

C. ADDITIONAL INSURED

City, its elected and appointed officers, agents, and employees shall be named as additional insureds on policies referred to in subparagraphs VIII(A)1. and VIII(A)2. above. It shall be required that the workers' compensation insurance be endorsed to waive the rights of subrogation against the City, its officials, agents, employees and volunteers.

D. EVIDENCE OF INSURANCE

Contractor shall furnish City, prior to the execution of this agreement, satisfactory evidence of the insurance required and evidence that each carrier is required to give City at least thirty (30) days prior written notice of the cancellation, non-renewals, or reduction in coverage of any policy during the effective period of the Agreement. All insurance companies affording coverage to Contractor shall be admitted insurance organizations authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California.

Contractor shall provide a substitute certificate of insurance no later than thirty (30) days prior to the policy expiration date. Failure by the Contractor to provide such a substitution and extend the policy expiration date shall be considered a default by Contractor and may subject the Contractor to a suspension or termination of work under the Agreement.

If Contractor is self-insured for workers' compensation the Contractor shall provide State certification to self-insure.

E. INDEMNIFICATION

Notwithstanding the foregoing insurance requirements, and in addition thereto, Contractor shall indemnify, defend and hold harmless the City, its elected and appointed officers, agents and employees from and against any and all claims, demands, liability, costs and expenses including court costs and counsel fees, arising out of the injury to or death of any person or loss of or physical damage to any property resulting from Contractor's acts or omissions under this agreement including but not limited to claims of City, its elected or appointed officers, agents, and employees.

F. ADDITIONAL INSURANCE

Maintenance of insurance by the Contractor as specified in this Agreement shall in no way be interpreted as relieving the Contractor of any responsibility whatever and the Contractor may carry, at its own expense, such additional insurance as it deems necessary.

G. INSURANCE RATING

The insurance companies providing insurance as required in this agreement shall have a current A.M. Best rating of no less than A:VII.

SECTION IX: PERFORMANCE BOND

Within thirty (30) days of the signature date of this Agreement, Contractor shall give a bond payable to City in the sum of (\$50,000) for the faithful performance on the part of the Contractor on all of the terms, conditions and covenants of this Agreement. Any other type of security, such as a letter of credit as acceptable to the City Attorney, may be posted as an alternative to a bond.

SECTION X: BREACH, DEFAULT, AND TERMINATION

A. GENERAL

In the event Contractor should default in the performance of any material provisions of this Agreement, and the default is not cured within thirty (30) days after written notice of default from City, the City Council shall determine whether this Agreement should be terminated. In the event the City Council decides to terminate this Agreement, City shall serve ten (10) days written notice of its intention to terminate upon Contractor. In the event City exercises its right to terminate this Agreement, City may, at its option, either directly undertake performance of the services or arrange with other persons to perform the services with or without a written agreement. In either event, Contractor shall be liable to City for any expense City incurs in performing the services in excess of the amount that would be payable to Contractor had it performed the services under this Agreement. Notwithstanding the preceding provisions of this Section X(A), if the default is of such a nature that it cannot be cured within thirty (30) days, and Contractor has commenced, and is diligently pursuing corrective action as reasonably determined by the City, the cure period shall be up to one-hundred twenty (120) days after initial written notice of default from the City, as reasonably needed, instead of thirty (30) days.

B. CITY USE OF CONTRACTOR EQUIPMENT TO PROVIDE SERVICE

In the event City exercises its option to terminate this Agreement, City shall pay to Contractor the amount due Contractor under the terms of this Agreement for services performed as of the date of termination. City may, in that event take possession of Contractor's equipment necessary to perform the services required under this Agreement, and retain it until City can purchase or otherwise acquire equipment suitable for that purpose, but in no event longer than 120 days. Notwithstanding the other provisions of this Section, the use of the equipment by the City shall be subject to a written lease or rental document approved in a timely manner by the Contractor (which approval shall not be unreasonably withheld) and any lending institution with a security interest therein. The lease shall include provisions whereby City shall compensate Contractor for the reasonable rental value of its equipment during the period City retains possession of it, and shall further require City to

assume liability for all damages, both to such equipment and to third parties, caused by City's operation of such equipment, and shall further require City to comply with all laws, State, Federal, or local, relative to registration, inspection and maintenance of such equipment.

C. EXCUSE OF DEFAULT

Should the performance of the obligations of Contractor under this Agreement be prevented or delayed by act of God, war, civil insurrection, fire, flood, storm, strikes, lockouts, or by any law, regulation, or order of any Federal, State, County, municipal authority, or by any other cause beyond the control of Contractor, Contractor's performance under this Agreement shall be excused to the extent it is so prevented or delayed, and such failure to perform shall not constitute a breach of this Agreement for the purposes of Section X(A) above.

D. CONTRACTOR'S INSOLVENCY

Contractor's failure to perform under the terms of this Agreement by reason of its insolvency or bankruptcy shall constitute a material breach of this Agreement for purposes of Section X(A) above.

SECTION XI: CITY RIGHT TO PERFORM

A. CONTRACTOR'S INABILITY TO PERFORM DUE TO LABOR DISPUTE

1. City Use of Contractor's Facilities and Equipment

In the event a labor dispute interrupts Contractor's service under this Agreement for more than seventy-two (72) hours, Contractor shall immediately offer the City a lease or rental document upon the execution of which City may take temporary possession and control of Contractor's facilities and equipment to enable City to continue to perform any of the Franchise Services provided for in this Agreement. In order to protect the public health, safety and welfare, City may retain possession and control of Contractor's facilities and equipment until Contractor demonstrates to City's satisfaction its ability to resume performing services; provided, however, that in no event shall City retain possession and control of Contractor's facilities and equipment longer than 120 days. In the event Contractor is unable to satisfactorily demonstrate its ability to perform by the end of the 120-day period, City may terminate this Agreement as provided in Section X(A) above.

2. Compensation; Use of Contractor's Staff

During any period in which City has temporary possession and control of Contractor's facilities and equipment, Contractor shall not be entitled to compensation from City, except for the fair rental value of its facilities and equipment to the relative extent to which such facilities and equipment are owned and financed by the Contractor. During any such period, City may employ Contractor's employees, provided that the number of employees and their rate of compensation shall not exceed that existing at the time Contractor became unable to perform because of the labor dispute.

SECTION XII: ASSIGNMENT

A. DEFINITION

For purposes of this Article, "assignment" shall include, but not be limited to: (i) a sale, or exchange of substantially all of Contractor's assets dedicated to service under this Agreement to a third party; (ii) a sale or exchange of fifty (50) percent or more of the assets of Contractor; provided that Contractor's sale of real estate assets shall not be an assignment hereunder if such assets are no longer to be used in providing service under this Agreement, or if the Contractor replaces them with other real estate assets or leases the real estate from the new owner for a term at least as long as the term of this Agreement; (iii) any reorganization, consolidation, merger recapitalization, stock issuance or reissuance, voting trust, pooling agreement, escrow arrangement, liquidation, or other transaction to which Contractor or any of its shareholders is a party which results in a change of ownership or control of fifty (50) percent or more of the value or voting rights in the stock of Contractor; and (iv) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such sale, exchange, or change of ownership. If Contractor is not a corporation, an assignment shall also include, among other things, any reorganization that has an effect similar to the situations described in foregoing sentence for corporations. For purposes of this Article, the term "proposed assignee" shall refer to the proposed transferee(s) or other successor(s) in interest pursuant to the assignment. If Contractor is a subsidiary of another corporation or business entity, any assignment, as defined above, by the parent company or corporation shall be considered an assignment by Contractor provided, however, that an assignment by the parent company to an affiliate of Contractor shall not be considered an "assignment" for the purpose of this Section.

B. SHAREHOLDERS

The shareholders of the Company at the time of execution of this Agreement are the Carl Repetto and Lillian Repetto Revocable Trust, dated June 28, 2002, Lillian Repetto Trustee, Michael Repetto and David Rosaia (the Original Principals). Notwithstanding the provisions of Section XII(A) above, the original principals may transfer, sell, exchange ownership interests or assets or do any of the other things specified in Section XII(A) above without permission of the City so long as one or a combination of the original principals, related persons, or related entities are the owners of more than fifty percent (50%) of the assets or ownership interests of the company or any transferee thereof. For the purposes of this Section, "Related Persons" shall mean siblings, children, parents or heirs of the Original Principals, and "Related Entities" shall mean any entity, more than fifty percent (50%) of whose stock or ownership interests are owned beneficially by the Original Principals or Related Persons, or any combination thereof or any trust whose trustee is one of the original principals or Related Persons.

C. CITY CONSENT

Contractor acknowledges that this Agreement involves rendering a vital service to City's residents and businesses, and that City has relied upon Contractor's representation of its experience and financial resources in qualifying Contractor to provide Franchise Services under this Agreement. Except as provided in this Article, Contractor shall neither assign its rights nor delegate, subcontract, or otherwise transfer its obligations under this Agreement to

any other person or entity without the prior written consent of City. Any such assignment without the consent of City shall be void and the attempted assignment shall constitute a material breach of this Agreement.

D. REQUIREMENTS OF CONTRACTOR

If Contractor requests City's consideration of and consent to an assignment, City's consent shall not be unreasonably withheld, provided that no request by Contractor for consent to an assignment need be considered by City unless and until Contractor has met the following requirements:

1. Contractor shall pay City its reasonable expenses for attorney's fees and investigation costs to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment.
2. Contractor shall furnish City with audited financial statements of the proposed assignee's operations for the immediately preceding five (5) operating years.
3. Contractor shall furnish City with satisfactory proof that the proposed assignee has the demonstrated technical capability to perform all Franchise Services, including: (i) that the proposed assignee has at least ten (10) years of solid waste management experience on a scale equal to or exceeding the scale of operations conducted by Contractor under this Agreement; (ii) in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure due to failure to comply with any state, federal, or local environmental laws and the assignee has provided City with a complete list of such citations and censures; (iii) the proposed assignee has at all times conducted its operations in a environmentally safe and conscientious fashion; (iv) the proposed assignee conducts its solid waste management practices in substantial compliance with all Federal, State, and local laws regulating the collection and disposal of solid waste including hazardous substances; and (v) or any other information required by City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe, and effective manner.

E. CONDITIONAL APPROVAL

City reserves the right to approve an assignment conditioned on, one or more of the following: reasonable modification of, or reasonable increase in the insurance requirements of Section VIII; an increase to the performance bond required pursuant to Section IX to a dollar value similar to that in broad use for similar services provided to other Northern California jurisdictions, and; use of another mechanism in addition to, or as an alternative to, the performance bond required in Section IX and/or agreement by the assignee to continue donation of all complimentary services (or such services as may be agreed by the City and assignee) set forth in Section IV(K).

F. APPLICATION AND ASSIGNMENT FEE

Any application for assignment shall be made in a manner prescribed by the City Manager. The application shall include a deposit in an amount to be set by resolution of the City Council to cover the cost of all direct administrative expenses including consultants necessary to adequately analyze the application, not to exceed Twenty Thousand Dollars (\$20,000.00). In addition, Contractor shall reimburse City for any and all additional costs

related to the assignment requested and not covered by the deposit. Bills shall be supported with evidence of the expense or cost incurred. The Contractor shall pay such bills within thirty (30) days of receipt. Upon completion of the assignment, any amount remaining from the deposit shall be reimbursed to Contractor within thirty (30) days of such completion. The assignment fees are over and above any other fees or charges specified in the Agreement.

G. TRANSITION

If City consents to an assignment, at the point of transition, Contractor shall cooperate with City and subsequent contractor(s) or subcontractor(s) to assist in an orderly transition which shall include, but not be limited to, Contractor providing customer and route lists.

SECTION XIII: OTHER AGREEMENTS OF THE PARTIES

A. SUPERSEDEENCE

This Agreement supersedes all prior agreements between City and Contractor, including the Original Franchise, and all other prior and contemporaneous oral agreements, resolutions of the City Council, representations and understandings of the parties.

B. MODIFICATION AND WAIVER

No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by City and Contractor. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall it be binding unless executed in writing by the party making the waiver.

C. WAIVER OF FLOW CONTROL RIGHTS

Contractor acknowledges the City's rights to direct the flow of Franchise Materials, and explicitly waives any rights under law that it has now or may in the future have regarding its ability to direct the flow of Franchise Materials.

D. COMPLIANCE WITH THE ACT

Contractor acknowledges its responsibility to assist the City in meeting and maintaining the AB 939-related goals for diversion. Contractor acknowledges that diligent provision of all Franchise Services is crucial to meeting the AB 939 goals, and that key to this success will be: 1) expanded multi-family, and commercial and industrial recycling programs as provided in the Contractor's Multi-Family and Commercial Recycling Plan described in Section IV(D); 2) thorough public education as provided in the Contractor's Consumer Information and Public Education Plan as described in Section V(B); 3) any future expansion of single-family Recyclable Materials and Yard Waste or Organic Materials collection, and; 4) any other future programs implemented by the City and the Contractor. Finally, Contractor acknowledges its responsibilities to propose programs to the City that may increase further diversion. This Section XIII(E) is not to be construed to require Contractor to perform programs, which constitute a change in the Scope of Operations without adjustment in compensation pursuant to the terms of this Agreement.

E. WAIVER OF RENEWAL STATUTE

Contractor hereby knowingly and specifically waives any and all rights it may have now or in the future as a result of California Public Resources Code Section 49520, or any subsequent statute granting the same or similar rights regarding City notice to Contractor of contract termination. Contractor agrees that its rights to provide any of the Franchise Services specified in this Agreement shall be governed solely by the provisions of this Agreement, and any of its rights to provide such services shall terminate upon termination of this Agreement in accordance with its terms.

F. SUBCONTRACTORS

Contractor shall be responsible for the performance of all persons who may be engaged in performing the services provided by this Agreement, including subcontractors and their employees. City shall deal directly with Contractor concerning the performance of this Agreement, including the work of subcontractors. In the event City is dissatisfied with work performed by a subcontractor, City shall notify Contractor, who shall take appropriate action, including replacing the subcontractor with no change in Collection Service Fees.

G. TIME OF THE ESSENCE

The parties acknowledge that the timely performance of this Agreement vitally affects the health and welfare of the public, and that time is therefore of the essence of this Agreement.

H. ATTORNEYS' FEES

If any legal action or any arbitration or other proceeding is brought for the enforcement or interpretation of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorney's fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

I. CITY FREE TO NEGOTIATE WITH THIRD PARTIES

Section II(A) states conditions under which Franchise Services shall be provided for a base term and for up to two (2) renewal terms. Section II(B) provides the City the sole option to further extend the Agreement. Contractor acknowledges that City may or may not exercise its options to extend the Agreement pursuant to Section II(B). Contractor further acknowledges that City may therefore, without reference to the quality of service provided by Contractor, wish to investigate all options for the provision of the exclusive and non-exclusive services granted to Contractor by this Agreement after the expiration of the term (including the base and renewal terms). Without limiting the generality of the foregoing, City may solicit proposals from Contractor and from third parties for the provision of any or all Franchise Services and may negotiate and execute agreements for such services which will take effect upon the expiration, or earlier termination under Section X(A) of this Agreement and/or any future agreements.

J. CONTRACTOR TO DEFEND AGREEMENT

Contractor shall defend at its sole expense the validity of this Agreement against all challenges to the Agreement by any entity or person not a party to this Agreement, provided that the City shall cooperate fully in any such defense, including consultation with, and seeking support from, other cities or city organizations similarly situated.

K. SEVERABILITY

If any term, provision, covenant or condition of this Agreement or any application of the term, provision, covenant or condition shall be held by a court of competent jurisdiction to be invalid, void, illegal or unenforceable in any respect, the validity, legality and enforceability of the rest of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

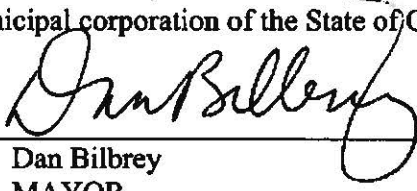
SIGNATURE PAGE

**AGREEMENT FOR THE COLLECTION, TRANSPORTATION
AND DISPOSAL OF REFUSE AND GARBAGE, INCLUDING
THE COLLECTION OF RECYCLABLE MATERIAL,
IN THE CITY OF TRACY**

In WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed
on 11/18, 2003.

CITY OF TRACY,
A municipal corporation of the State of California

ATTEST: _____

By: 
Dan Bilbrey
MAYOR

By: 
Gloria J. Schmidt
CITY CLERK

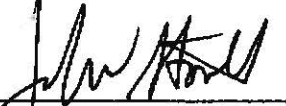
APPROVED AS TO FORM:

By: 
Debra E. Corbett
CITY ATTORNEY

TRACY DELTA SOLID WASTE
MANAGEMENT, INC. "CONTRACTOR"

By: 
Dave Rosaia, CHARMAN OF THE BOARD

By: 
Mike Repetto, PRESIDENT

By: 
John Stovall, ATTORNEY AT LAW

