

**AGREEMENT BETWEEN THE CITY OF GRAND TERRACE AND USA
WASTE OF CALIFORNIA, INC. FOR THE PROVISION OF INTEGRATED
WASTE MANAGEMENT SERVICES**

This Franchise Agreement ("Franchise Agreement") is entered into this 14th day of July, 1997 by and between the CITY OF GRAND TERRACE ("City") and USA Waste of California, Inc., a Delaware Corporation (Contractor) for Integrated Waste Management Services.

RECITALS

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 and construction debris handling within their jurisdictions; and

WHEREAS, Pursuant to California Public Resources Code Section 40059 (a)(1), the City Council of the City of Grand Terrace ("City") has determined that the public health, safety, and well-being require that an exclusive franchise be awarded to a qualified enterprise for the collection, transportation, recycling, composting, and disposal of solid waste in residential areas in the City of Grand Terrace; and

WHEREAS, the City Council of the City of Grand Terrace declares its intention of maintaining reasonable rates for the collection, transportation, recycling, composting, and disposal of solid waste and construction debris and for providing temporary bin/roll-off services to residential properties within City Limits;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

SECTION 1. GRANT OF RESIDENTIAL EXCLUSIVE FRANCHISE.

This Franchise Agreement grants an exclusive franchise as provided herein and pursuant to Ordinance No. 162, of City of Grand Terrace and California Public Resources Code Section 40059 (a)(1) to USA Waste of California, Inc. for the collection, transportation, recycling, composting, and disposal of solid waste and construction debris for residential areas within the City of Grand Terrace. City reserves the right to amend Ordinance No. 162 and the terms of this Agreement in any manner necessary for the safety or welfare of the public or to protect the public interests. This Franchise Agreement shall be in force and effect beginning June 26, 1997 or the date of purchase of the stock of BFI/Loma Linda Disposal Company by Contractor, whichever occurs

later, within the corporate limits of the City as they now or may hereafter exist, as shown in Exhibit "A", Franchise Area.

SECTION 2. DEFINITIONS

Whenever any term used in this Franchise Agreement has been defined by Ordinance No. 162, of the City of Grand Terrace or California Public Resources Code, the definitions in the City Ordinance or Public Resources Code shall apply unless the term is otherwise defined in this Agreement.

- A. AB 939. "AB 939" shall mean the California Integrated Waste Management Act of 1989, as it may be amended from time to time.
- B. Bins. "Bins" shall mean those containers provided by Contractor for multi-family residential uses. Bins are of two types: (I) Bins (usually 3 cubic yards in size) which are picked up by refuse trucks by means of front loading apparatus; and (II) Roll-off Bins (usually 40 cubic yards in size) which are picked up by trucks using rear loading winches onto rails.
- C. Compostables. "Compostables" shall mean chipped or bulk tree brush and/or grass trimmings, plant and tree clippings, Christmas trees, leaves and other discarded green waste from parks, yards, gardens, City facilities, residential curbside collection programs in the City, and any vegetated areas and other mutually acceptable organic bulking agents generated and collected from within the geographical boundaries of the City.
- D. Curbside. "Curbside" means a location for placement of refuse containers that provides for convenient and efficient access by collection equipment.
- E. City Limits. "City Limits" means the boundaries of the City together with all amendments and changes thereto, which boundaries are shown by maps incorporated herein by reference and which are on file in the office of the City Clerk of the City Council.
- F. Contractor. "Contractor" means USA Waste of California, Inc. a Delaware Corporation, the entity granted the Franchise pursuant to this Franchise Agreement.
- G. Greenwaste. "Green Waste" shall mean plant material (leaves, grass, branches, brush, flowers, tree wood waste, etc.); and debris commonly thrown away in the course of maintaining yards and gardens; and other particular biodegradable waste.

- H. Recyclables. "Recyclables" shall mean products or substances, including but not limited to paper, cardboard, metal, glass, grass clippings, garden waste, vegetable matter, or other substances capable of being re-processed or reused, which have passed through their originally intended usage and which have been discarded or placed for collection by their owner in accordance with the methods prescribed by this Agreement, whether or not such products have monetary value.
- I. Residential. Residential includes single family residences, multi-family residences, including apartments and condominiums, but does not include hotels or motels.
- J. Solid Waste. "Solid Waste" shall mean all waste that is acceptable for disposal in a Class III Landfill and it shall not include Special Waste as defined herein and/or waste designated for Class I or Class II Landfills.
- K. Special Wastes. "Special Wastes" shall mean all the items and materials which are set forth in Exhibit "B", "Special Wastes."

SECTION 3. ACCEPTANCE: WAIVER.

Contractor agrees to be bound by and comply with all the requirements of Ordinance No. 162 and this Franchise Agreement. Contractor waives Contractor's right to challenge the terms of this Franchise Agreement and Ordinance No. 162, under Federal, State or local law, or administrative regulation, as such laws and regulations exist as of the date of execution of this Agreement. Contractor waives any right or claim to serve the City or any part of the City under any prior grant of franchise, contract, license, or permit issued or granted by any governmental entity including any right under Section 49520 of the Public Resources Code.

SECTION 4. FRANCHISE AREA.

The Franchise Area granted by this Franchise Agreement shall be all residential premises located within the corporate boundaries of the City of Grand Terrace, as they now or may hereafter exist.

SECTION 5. SERVICES PROVIDED BY CONTRACTOR

A. Single Family Residential

Contractor shall provide services using a completely 100% mechanized residential container system for refuse and green waste. Mechanized shall mean that Contractor shall provide collector trucks that are capable of picking

up containers, emptying them into collector truck and then returning them to the curbside.

Parameters of this service shall include:

- (1) Weekly Service: Once each week, Contractor shall collect the solid waste and compostables (except bulky items and household hazardous waste) which have been placed, kept, or accumulated in containers at single family residences within the Franchise Area and placed at curbside prior to Contractor's normal weekly collection time. All solid waste, compostables and recyclables must be placed within containers at curbside, without obstructions, so as to permit collection. City agrees to use its best efforts to enforce parking and other ordinances so as to facilitate this curbside collection system. Contractor may negotiate special pickup procedures above and beyond the normal services described above with customers for an additional fee in an amount provided in the approved rate structure.
 - (2) Green Waste Collection: Contractor agrees to collection and recycling of green waste material, to be collected in a separate container. This shall be done in a process mutually agreeable to both the City and Contractor.
 - (3) Recycling: Contractor will collect recyclables every other week. Within six months, City and contractor will evaluate and consider the necessity of weekly service. If deemed necessary, contractor will collect recyclables weekly.
- B. Multi-Family Residential. Contractor shall provide solid waste, compostables and recyclables collection services to all multi-family units, excluding those premises indicated in exhibit "E" of this Agreement. Parameters of the service shall include collection and recycling programs as follows:
- (1) Multi-Family Weekly Service. Not less than once per week, and more frequently if required, to handle the waste stream of the premises where the bins are located. Contractor shall collect the solid waste (including bulky items which have been placed in a closed bin), compostables and recyclables (except household hazardous waste) which have been placed for collection in solid waste or recycling bins.

- (2) Bulky Item and Household Hazardous Waste Services. In addition to weekly service, Contractor shall provide bulky item services to multi-family residences.

C. Additional Services

- (1) Community Service Collection. Contractor shall provide roll-off containers to any non-profit group, e.g. Boy Scouts, Girl's Club, churches, soccer, little league, etc., free of charge for the express purpose of the group collecting recyclable materials. Contractor shall remit all revenues received to the group less the Contractor's transportation cost.
- (2) Community Cleanup. Contractor shall perform and operate semi-annual City cleanup days, free of charge. This program shall not be required to include commercial solid waste. Contractor shall provide an adequate number of bins based upon recent experience. Bin transportation shall be provided free of charge. The Contractor may schedule the semi-annual City cleanup days to coincide with the County of San Bernardino's free dump days. If the County's free dump day program is discontinued, and no other alternative exists for having landfill tipping fees waived, the Contractor shall pay all landfill fees for each load hauled during semi-annual City cleanup days.
- (3) Construction and Temporary Bin/Roll-off Services. Contractor shall provide construction and temporary bin/roll-off services using rates reflected in the approved rate structure, as those rates may be amended by resolution of the City Council.
- (4) Rental Bin Services. Contractor shall provide three cubic yard Bins for use by households and dwelling units for the purpose of temporary cleanups. This service shall be provided at an additional cost to the customer requesting such services. Items deemed not acceptable for this program include any dead animal, dirt, earth, Hazardous Waste or Biohazardous Waste. In addition, construction or industrial waste materials such as plaster, lumber, brick, tile, or fixtures, resulting from building construction, alterations, or manufacturing processes shall not be acceptable under this program. All refuse placed in the containers must fit into the container, and not exceed the dimensions of the container.

- (5) Overflowing Bins. Contractor shall clean out any overflowing bins or enclosures within twenty-four (24) hours of notification by City. Contractor shall work with the City Manager or designee in identifying continual problems in customer bins or enclosures.
- (6) Christmas Tree Pickup. Contractor shall pick up, curbside, all Christmas trees no later than January 7 of each year. The trees shall be diverted from the landfill, either by deposit at a composting facility, a tree farm or nursery, or a grinding operation.
- (7) Refuse Collection and Recycling Sites. Contractor, at City's sole option, shall provide refuse collection and recycling to the following locations within the Franchise Area, at no charge to City or the entities listed:
- * City Fire Stations
 - * City Hall, City Public Buildings, Public Works Yard and City Parks.
- (8) Containers for Use of City Public Works Department. Upon request Contractor agrees to provide 30 cubic yard Containers to the City for use in public land cleanups and local maintenance at no additional cost to the City as agreed. These Containers will be serviced on an as-needed basis, and care will be exercised to minimize disposal costs and maximize recycling. To that end, separate container(s) will be dedicated to the collection of green waste, and every effort will be made to divert this material from disposal.
- (9) Bulky Item Services. Contractor shall provide temporary bin/roll-off services to customers for numerous items from annual cleanups, moving, extensive yard work, minor construction projects, etc. according to the rate schedule in the approved rate structure as that rate may be amended by the City Council. Bulky item pickups shall be charged an additional fee in an amount provided in the approved rate structure as that fee may be amended by resolution of the City Council.

- (10) Recycling Program. The Contractor shall provide recycling services in the Franchise Area in accordance with the following terms:

Recycling Programs, Service Commencement, AB939 Topics, Facility and Revenue Considerations

- 1) Contractor warrants and guarantees that the City shall comply with requirements of AB939 in that it shall cause at least twenty-five percent (25%) at the time specified by AB939 and subsequently fifty-percent (50%) of the waste stream collected under this Franchise Agreement to be diverted from ultimate deposit in landfills in accordance with the regulations implementing the California Integrated Waste Management Act of 1989 (as amended – also known as AB939). Contractor shall implement alternatives identified in the City's Source Reduction and Recycling Element (SRRE) and Household Hazardous Wastes Element (HHWE). Contractor shall be responsible to implement the public education and awareness portions of the SRRE and HHWE, at Contractor's expense. Contractor shall provide City with written reports in a form adequate to meet City's reporting requirement to the California Integrated Waste Management Board and to the County of San Bernardino throughout the term of this Franchise wherein its performance under this program is set forth in detail. In the event that City does not comply with the requirements of AB939 or its successor legislation, resulting in any fine, assessment, administrative order or any other cost being assessed against the City, contractor expresses, agrees to indemnify, hold harmless and defend the City against any such proposed assessment.
- 2) Recycling Containers. Contractor shall provide one (1) Recycling Container for commingled Recyclables for each household having residential Refuse (can) service in the program. The Recycling Containers shall have a minimum capacity of 18 gallons. The Recycling Containers shall bear a City recycling logo and identification plate on which the citizen may place their address. The type, color and design of the Recycling Containers are subject to City Approval.
- 3) The Contractor shall distribute the Recycling Containers and shall maintain records indicating which properties have received Recycling Containers. Contractor shall be responsible for the replacement of lost or damaged recycling containers at no cost to the City or to the resident.
- 4) Contractor shall maintain an adequate stock of Recycling Containers to immediately replace lost, stolen, or damaged Recycling Containers.

- 5) Collection Schedule. Collection of Recyclable Material shall be performed on the same day that regular Refuse is collected. Residential accounts for single family and multi-family dwellings having residential refuse (can) service shall receive recyclable material collection not less than once every two weeks.
- 6) Recyclable Materials to be Collected. The following Recyclable Materials shall be collected in the residential recycling collection program:
- * Newspaper
 - * HDPE/PETE Colored & Clear Plastic
 - * Mixed Paper (junk mail/magazines)
 - * Chipboard, Cardboard and Phone Books
 - * Rigid Containers, defined as aluminum Cans, HDPE and Pet Plastics, All Colors of Glass Containers and Bi-Metal Cans.
- 7) Recycling Buy-Back Center. Contractor agrees to establish and operate a Buy-Back Center for California Redemption items within the City of Grand Terrace. This center shall be in operation within 60 days after receiving approval from the State of California, and shall be continuously operated for as long as the State of California underwrites a value redemption program or the term of this agreement, whichever terminates first.
- 8) Revenue from Recycling. Contractor agrees to a division of revenue received from recycled materials with the City receiving 80% of net revenue per ton and Contractor receiving 20% of net revenue per ton. Net revenue will be determined by two, mutually agreed upon local processing fees per ton. Contractor agrees to pay City not less than \$500.00 per month.

SECTION 6.

A. Developments in Methods and Technologies for Refuse and Recyclable Materials Collection.

Contractor and the City acknowledge the dynamic nature of science and technology and therefore agree to cooperate in the best interests of the City in efforts to research and develop Recycling Materials, Refuse and other pilot programs during the term of this Agreement. In addition, Contractor shall meet with the City on an annual basis during the second calendar quarter of each year to discuss scientific, technological and economic developments and advancements in the field of Refuse and Recyclable Materials management, and, if any are reasonably available, to suggest changes to the methods currently utilized by the City or to suggest the implementation of pilot programs.

B. Household Hazardous Waste:

(1). Mobile Household Hazardous Waste Collection Program.

At least annually, the Contractor will participate with the County of San Bernardino in a Mobile Household Hazardous Waste Collection Program designed to collect not only non-permit required household hazardous wastes, but also permit required household hazardous wastes, e.g., pesticides, herbicides, oil base paint, etc. These County and Contractor roundups should be coordinated in an effort to provide all residential non-permit required and permit-required roundups annually. If the Household Hazardous Waste Program is discontinued or modified by San Bernardino County, the Contractor may be required, at City's request, to operate a similar program under terms and conditions negotiated with the City, by amendment to the approved rate structure. If the County landfill tipping fee is modified to eliminate Household Hazardous Waste services, the City may require the Contractor to pay fees which may be passed through to the customer.

(2). Motor Oil Program.

The Contractor shall pick up, on a weekly basis, used motor oil from residences and multi-family units, upon request from the households, in quantities not to exceed two gallons per household per request. The contractor may refuse to accept any oil which has not been placed in an appropriate container, as mutually agreed upon by the City and Contractor. The Contractor agrees to have any oil collected under this section disposed of/recycled in accordance with all pertinent federal, state and local laws and regulations.

(3). Special Wastes.

Contractor may, but is not required to, provide such collection, transportation and disposal services for special wastes. Contractor may provide such services for special wastes if contracted to do so by customers under separate written contracts negotiated between Contractor and the customer generating such special wastes. A schedule of fees for these special waste services shall be approved by the City Manager.

(4). Household Hazardous Waste Fee.

Contractor shall be responsible for collection and remittance to the City, a .20 cent per residence charge for household hazardous waste services.

C. COMMUNITY EDUCATION.

Promotional Efforts.

Publicity and promotional efforts are of the utmost importance to achieve acceptable participation levels for Refuse and Recycling in the City. The Contractor, working in close contact with the City, shall be responsible for providing promotional information for the program.

Promotional efforts include media advertising, education, contests and community involvement programs to encourage participation by individual volunteers, commercial enterprises and community groups (e.g. parent teacher associations, schools and civic, youth and sporting organizations). All promotional material, programs, contests and efforts must be reviewed and approved by the City prior to public presentation or distribution.

SECTION 7. REIMBURSEMENT OF CITY EXPENSES.

A. **Cash Bond.** Contemporaneously with the execution of this Franchise Agreement, the Contractor shall deposit a cash bond in the sum of one twelfth of the estimated annual franchise fee, adjusted annually, in an interest bearing account for the benefit of the City. The cash bond shall be on terms acceptable to the City Attorney. The cash bond shall serve as partial security for the faithful performance by Contractor of all provisions and obligations of this Franchise Agreement.

- (1) After thirty (30) days following Contractor's failure to pay the City an amount owing under this Franchise Agreement, the cash bond may be assessed by the City upon five (5) days prior written notice to the Contractor for purposes including, but not limited to:
 - (a) Failure of Contractor to pay the City sums due under the terms of the Franchise Agreement.
 - (b) Reimbursement of costs borne by the City to correct Franchise Agreement violations not corrected by Contractor, after due notice.

(c) Monetary remedies or damages assessed against Contractor due to breach of the Franchise Agreement.

(2) The Contractor shall deposit a sum of money sufficient to restore the cash bond to the original amount within thirty (30) days after notice from the City that any amount has been withdrawn from the cash bond.

B. Insurance Coverage. Contemporaneously with the execution of this Franchise Agreement, the Contractor shall deposit endorsements evidencing the existence of policies of Insurance required pursuant to this Franchise Agreement. In addition, Contractor shall make its policies available for review at a location in San Bernardino or Riverside County upon receipt of seventy-two (72) hours advance written notice from the City.

SECTION 8. FRANCHISE TERM.

The Franchise term expires on October 30, 2006.

SECTION 9. FRANCHISE TRANSFERABLE: CITY CONSENT REQUIRED

A. It is the expressed intent of the Parties to this Franchise Agreement that the rights and privileges granted by this Franchise Agreement shall not be transferred, sold, hypothecated, leased, 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 the Contractor, either by act of the Contractor or by operation of law, nor shall any change in control occur, without the prior written consent of City, expressed by resolution. It is further understood and agreed that the City's consent to any of the above actions or transactions may be withheld for any reason, with or without cause, and that upon the occurrence of any of the above events, without consent of City, City shall have the absolute right to terminate the Franchise Agreement without notice. Any transfer in the franchise will require contractor to pay the City a transfer fee of **FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00)**.

B. In addition to the rights provided City with respect to terminating the Franchise Agreement, should Contractor take any of the actions provided in Subsection A herein prior to obtaining written consent of City, all of the profits or twenty-five percent (25%) of the Gross Operator Receipts,

from the date of the unauthorized action until the date City receives notice of the unauthorized action, whichever is greater, shall be returned to the City.

- C. City Consent, is required for any change in control of Contractor. "Change in Control" shall mean any sale, transfer, or acquisition of Contractor. Contractor is a corporation, and any acquisition of more than twenty-five percent (25%) of Contractor's voting stock by any person, or groups of persons acting in concert, who already own less than fifty percent (50%) of the voting stock shall be deemed a change in control. Provided, however, that the transfer of stock of the Contractor to another refuse company shall not be deemed a change in control.

SECTION 10. FRANCHISE FEE.

Contractor shall pay City a Franchise Fee of 10% of gross revenues, minus the Household Hazardous Waste fee.

SECTION 11. FRANCHISE TRANSFER: FEES.

- A. Any application for a franchise transfer or change in control, as described in Section 9, Subsection A, shall be made in the manner prescribed by the City Manager. The application shall include the payment and reimbursement to City of up to \$10,000 to cover the cost of all direct and indirect administrative expenses including consultants and attorneys, necessary to adequately analyze the application and to reimburse City for all direct and indirect expenses. In addition, the Contractor shall reimburse the City for all costs not covered by the transfer fee. Bills shall be supported with evidence of the expense or cost incurred. The applicant shall pay such bills within thirty (30) days of receipt.
- B. These franchise transfer fees are over and above any franchise fees specified in this Franchise Agreement.

SECTION 12. IMPOSITION OF DAMAGES OR TERMINATION.

- A. If the City Manager determines that the Contractor's performance pursuant to this Franchise Agreement has not been in conformity with reasonable industry standards which are obtained in similar cities in Southern California, the provisions of this Franchise agreement, the requirements of Ordinance No. 162, the requirements of the California Integrated Waste Management Board, including but not limited to, requirements for source reduction and recycling (as to the waste stream

subject to this Franchise Agreement) or any other applicable Federal, State, or local law or regulation, including but not limited to the laws governing transfer, storage, or disposal of special wastes, the City Manager may advise Contractor, in writing of such deficiencies. The Manager may, in such written instrument, set a reasonable time within which correction of all such deficiencies is to be made. Unless otherwise specified, a reasonable time for correction shall be sixty (60) days from the receipt by the Contractor of such written notice. The City Manager shall review the Contractor's response and refer the matter to the City Council or decide the matter and notify the Contractor of that decision, in writing. A decision or order of the City Manager shall be final and binding on Contractor if the Contractor fails to file a "Notice of Appeal" with the City Manager within 30 days of receipt of the City Manager's decision. Within ten working days of receipt of a Notice of Appeal, the City Manager shall either refer the appeal to the City Council for proceedings in accordance with Section 12C-D, below, or refer the matter to a hearing officer as provided in Section 13, below.

- B. The City Council, in such case, may set the matter for hearing. The City Council shall give Contractor, and any other person requesting the same, fourteen (14) days written notice of the time and place of the hearing. At the hearing, the City Council shall consider the report of the City Manager indicating the deficiencies, and shall give the Contractor, or its representatives and any other interested person, a reasonable opportunity to be heard.
- C. Based on the evidence presented at the public hearing, the Council shall determine by Resolution whether the Franchise Agreement should be terminated or liquidated damages imposed. If, based upon the record, the City Council determines that the performance of Contractor is in breach of any material term of this Franchise Agreement or impose liquidated damages, as defined below. The decision of the City Council shall be final and conclusive, subject to referral of the matter for an administrative hearing pursuant to section 13, below. Contractor's performance under its franchise is not excused during the period of time prior to the City Council's final determination as to whether such performance is deficient.
- D. This right of termination or to impose liquidated damages is in addition to any other rights of City upon failure of Contractor to perform its obligations under this Franchise Agreement.

E. Termination of Franchise. The City reserves the right to terminate Contractor's franchise or impose liquidated damages in the event of any of the following:

- (1) If the Contractor practices, or attempts to practice any fraud or deceit upon the City.
- (2) If the Contractor becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of contractor in a bankruptcy proceeding.
- (3) If the Contractor fails to perform in full force and effect, the workers compensation, liability, indemnification coverage, or cash bond as required by the Franchise Agreement.
- (4) If the Contractor violates any orders or violation of any regulatory body having jurisdiction over the Contractor relative to the Franchise Agreement, provided that the Contractor may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which no breach of the franchise shall be deemed to have occurred.
- (5) If the Contractor ceases to provide collection services as required under this Franchise Agreement over all or a substantial portion of its Franchise Area for a period of seven (7) days or more, for any reason within the control of the Contractor.
- (6) If the Contractor willfully fails to make any payments required under the Franchise Agreement and/or refuses to provide the City with required information, reports and/or test results in a timely manner as provided in the Franchise Agreement.
- (7) Any other act or omission by the Contractor which materially violates the terms, conditions or requirements of the Franchise, City Ordinance, the California Integrated Waste Management Act of 1989, as it may be amended from time to time or any order, directive, rule or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or if the Contractor cannot reasonably correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

F. Liquidated Damages.

- (1) The City finds, and the Contractor agrees, that as of the time of the execution of this Franchise Agreement, it is impractical, if not impossible to reasonably ascertain the extent of damages which shall be incurred by the City as a result of a material breach by Contractor of its obligations under this Franchise Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (I) Substantial damage results to members of the public who are denied services or denied quality or reliable services; (II) Such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Franchise Agreement to individual members of the general public for whose benefit this Franchise Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (III) That services might be available at substantially lower costs than alternative services, and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (IV) The termination of this Franchise Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.
- (2) After providing notice and opportunity to cure as set forth in Section 12.A., the City Council may, in its discretion, assess liquidated damages not to exceed the sum of Seven Hundred Fifty Dollars (\$750.00) per day, for each calendar day that service is not provided by Contractor in accordance with this Franchise Agreement. The amount of the liquidated damages shall be increased by the past year's consumer price index for the San Bernardino-Riverside area on March 1 and effective July 1 of each year. In addition, the Council may order the assessment against the cash bond required by Section 7A, above, the termination of the Franchise Agreement, or both.
- (3) The City finds, and the Contractor acknowledges and agrees that the above described liquidated damages provisions represent a reasonable sum in light of all the circumstances.

Said liquidated damages sums shall be applicable to each business day of delay during which Contractor has been found by the City Council to be in material default pursuant to this Section. The Contractor shall pay any liquidated damages assessed by the City Council within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, the City may withdraw them from the cash bond required by Section 7A, above, order the termination of the franchise granted by this Franchise Agreement, or both.

SECTION 13. ADMINISTRATIVE HEARING PROCEDURES.

- A. Should Contractor contend that the City is in breach of this Franchise Agreement, it shall file a written request with the City Manager for an administrative hearing on the allegation, within fourteen (14) days of the alleged breach or of Contractor's notice thereof.
- B. If either the City Manager or the City Council refers a matter to a hearing officer, or if the Contractor should allege a breach of the Franchise by the City, City and Contractor shall mutually agree on a hearing officer. If agreement is not reached within twenty (20) working days of the filing of the notice of breach, then Contractor shall select the hearing officer from a list of three potential hearing officers who are retired California Superior Court judges or Appellate Court justices, none of whom are related to parties, prepared by the City Manager and approved by the City Council.
- C. The hearing shall be conducted according to California Code of Civil Procedure Section 1280, et seq. The exclusive venue shall be in San Bernardino County, California. A hearing officer to whom a matter is referred shall have the authority to (I) order the City or Contractor to undertake remedial action to cure the breach and to prevent occurrence of similar breaches in the future; (II) Assess damages and/or levy a penalty upon the City or the Contractor consistent with the terms of this Franchise Agreement; or (III) Find there has been no breach. If the hearing officer finds there has been no breach, such a decision precludes the City from conducting a default hearing. For any occurrence or series of related occurrences, the penalty shall be reasonably related to the seriousness of the breach of the Franchise Agreement, and may be levied in addition to damages.
- D. The party losing the hearing shall be liable for the hearing officer's fees.

- E. Any failure of the Contractor to comply with the hearing officer's order shall be deemed a material breach of the Franchise Agreement, and may be grounds for termination of the Franchise Agreement.
- F. The hearing officer shall commence the hearing within thirty (30) days of selection unless the parties and the hearing officer otherwise agree. Any party to the hearing may issue a request to compel reasonable document production from the other party. Disputes concerning the scope of document production and enforcement of document requests shall be subject to agreement by the parties, or if agreement is not reached within twenty (20) days of that document request, then by disposition by order of the hearing officer. Any such document request shall be subject to the proprietary rights and rights of privilege of the parties, and the hearing officer shall adopt procedures to protect such rights. Except as may be otherwise specifically agreed by the parties, no other form of pretrial discovery shall be available to the parties; provided that if either party notifies the hearing officer that a material violation of the franchise or rights in connection therewith is claimed by either party, the provisions of Code of Civil Procedure Section 1283.05 shall apply.
- G. Neither party may communicate separately with the hearing officer after the hearing officer has been selected. All subsequent communications between a party and a hearing officer shall be simultaneously delivered to the other party. This provision shall not apply to communications made to schedule a hearing or request a continuance.
- H. Until final decision is entered from the hearing officer proceeding under the foregoing provisions and the time for appeal or other post-judgment petition has expired, the imposition or enforcement of any penalties or sanctions provided in the Franchise Agreement and related to the subject matter of the hearing shall be stayed. The hearing officer may modify or cancel any proposed penalties or sanctions upon finding that the party subject thereto acted with substantial justification or if the interest of justice so require.
- I. Any party to a hearing may petition the Superior Court in San Bernardino County, California to confirm, correct, or vacate the award on the grounds stated in the General Arbitration Act. Any proceedings on appeal shall be in accordance with Code of Civil Procedures 1294 and 1294.2.

SECTION 14. CITY'S ADDITIONAL REMEDIES.

In addition to the remedies set forth in Section 12 and 13, above, City Shall have the following rights and remedies:

- A. To rent or lease equipment from Contractor at its fair and reasonable rental value for the purpose of collecting, transporting, recycling, composting, and disposing of solid waste and construction debris and providing temporary bin/roll-off services which Contractor is obligated to collect, transport, recycle, compost, and dispose of solid waste and construction debris and provide temporary bin/roll-off services pursuant to this Franchise Agreement, for a period not to exceed six (6) months. In the case of equipment not owned by Contractor, Contractor shall assign to City, to the extent Contractor is permitted to do so under the instruments pursuant to which Contractor possesses such equipment, the right to possess the equipment. If City exercises its rights under this Section, City shall pay to Contractor the reasonable rental value of the equipment so taken for the period of City's possession thereof.
- B. The right to license others to perform the services otherwise to be performed by Contractor hereunder, or to perform such services itself; and
- C. The right to obtain damages and/or injunctive relief. Both parties recognize and agree that in the event of a breach under the terms of this Franchise Agreement by Contractor, City may suffer irreparable injury and incalculable damages sufficient to support injunctive relief, to enforce the provisions of this Franchise Agreement and to enjoin the breach thereof.

SECTION 15. RIGHTS OF CITY TO PERFORM DURING EMERGENCY.

- A. Should Contractor, for any reason whatsoever, except the occurrence or existence of any of the events or conditions set forth in Section 27A "Force Majeure", below, refuse or be unable to collect, transport, recycle, compost, and dispose, and provide temporary bin/roll-off services any or all of the refuse, compostables, and recyclables which it is obligated under this Franchise Agreement for a period of more than seventy-two (72) hours, and if as a result thereof, debris, refuse, compostables, recyclables and construction debris should accumulate in City to such an extent, in such a manner, or for such a time that the City Manager 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 temporarily take possession of any or all equipment and facilities of Contractor previously used in the collection, transportation, recycling, composting, and disposal of solid waste and construction debris and provide temporary bin-roll-off services under this Franchise Agreement, and to use such equipment and facilities to collect, recycle, compost, and transport any or all debris, refuse, compostables, recyclables, and construction debris and provide temporary bin/roll-off services which Contractor would otherwise be obligated to collect, recycle, compost, transport, and dispose of solid waste and construction debris and provide temporary bin/roll-off services pursuant to this Franchise Agreement. Contractor agrees that in such event it shall fully cooperate with City to effect such a transfer of possession for City's use.

- B. Contractor agrees that, in such event, City may take temporary possession of and use all of said equipment and facilities without paying Contractor any rental or other charge, provided that City agrees that, in such event, it assumes complete responsibility for the proper and normal use of such equipment and facilities. City agrees that it shall immediately relinquish possession of all of the above mentioned property to Contractor upon receipt of written notice from Contractor to the effect that it is able to resume its normal responsibilities under this Franchise Agreement.

SECTION 16. PRIVACY.

- A. Contractor shall strictly observe and protect the rights of privacy of customers. Information identifying individual customers or the composition or contents of a customer's waste stream shall not be revealed to any person, governmental unit, private agency, or company, unless upon 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 waste stream analyses which may be required by AB939.
- B. Contractor shall not market or distribute, outside the normal course of its business, mailing lists with the names and addresses of customers.
- C. The rights accorded customers pursuant to this Section shall be in addition to any other privacy right accorded customers pursuant to Federal or State law.

SECTION 17. REPORTS AND ADVERSE INFORMATION.

- A. Monthly Report. Contractor shall submit to City a Monthly Report in a form acceptable to City on or before the fifteenth (15th) day following the end of each calendar month, which report shall at a minimum include the following information:
1. Volume of Refuse collected by service type (in tons).
 2. Volume of Refuse diverted from landfill disposal as the result of Contractor's performance of the Recyclable Materials collection program, in manner consistent with the reporting requirements promulgated pursuant to AB939.
 3. Indication of recycling program participation. Participation rates shall be determined from data gathered on a daily basis.
 4. A record of Recyclable Materials sold reflecting the quantity or tonnage sold of each category.
 5. Information compiled concerning customer complaints, along with a brief narrative describing any operational changes made to respond to complaints received and to prevent their reoccurrence in the future; and
 6. A list of notices issued detailing Recyclable Materials contamination problems and Contractor's follow-up actions, including copies of contamination notices and warning letters issued during the month.
- B. Annual Reports. The City shall require that within sixty (60) days after the close of Contractor's fiscal year, the Contractor shall submit a written annual report, in an audible form approved by the City, including, but not limited to, the following information:
1. A summary of the previous year's (or, in the case of the initial report year, the initial years) activities including, but not limited to, services began or discontinued during the reporting year, and the number of customers for each class of service;

2. A report, in a form satisfactory to the City, on the City's progress in meeting, and maintaining its ability to meet its goals, under AB939, along with any recommended changes.
3. A revenue statement, setting forth quarterly Franchise Fees and the basis for the calculation thereof, certified by an officer of the Contractor;
4. A revenue statement setting forth quarterly revenue received from the sale of recyclables collected pursuant to this Agreement.
5. A list of Contractor's officers and members of its board of directors.
6. A list of stockholders or other equity investors holding five percent (5%) or more the voting interest in the Contractor and any subsidiaries unless Contractor is a public corporation whose annual reports are publicly available.

C. Adverse Information. Contractor shall provide City two copies of all reports, or other material adversely affecting the Franchise Agreement, submitted by Contractor to the EPA, the California Integrated Waste Management Board, or any other Federal or State 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. 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 Section 26, below:

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 government bodies relating specifically to Contractor's performance of services pursuant to this Franchise Agreement. Any confidential data exempt from public disclosure by State or Federal law shall be retained in confidence by the City and its authorized agents and City shall make every reasonable effort to ensure that it is not made available for public inspection, except that City shall not incur liability for its inadvertent disclosure of such information.

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 at the sole expense of the Contractor.
 4. A copy of each of Contractor's annual and other periodic public financial reports and those of its parent, or where Contractor is a subsidiary of a public corporation and other entities, as the City request, shall be submitted to the City within thirty (30) days after receipt of a request.
- D. Failure to Report. The refusal, failure or neglect of the Contractor to file any of the reports required, or the inclusion of any materially false or misleading statement or representation made knowingly by the Contractor in such report shall be deemed a material breach of the Franchise Agreement, and shall subject the Contractor to all remedies, legal or equitable, which are available to the City under the Franchise Agreement or otherwise.

SECTION 18. ANNUAL REVIEW OF PERFORMANCE, QUALITY OF SERVICE, AND SYSTEM AND SERVICE REVIEW.

- A. At City's sole option, within ninety (90) calendar days of the first anniversary of the effective date of this Franchise Agreement, and each year thereafter throughout the term of the Franchise 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, refuse collection and recycling systems, and other services. In addition, any customer may submit comments or complaints during the review meetings, either orally or in writing, and these shall be considered.
- B. Within thirty (30) calendar days after the conclusion of the public hearing, City may issue a report with respect to the adequacy of performance and quality of service. If any noncompliance with the franchise is found, City may direct Contractor to correct the inadequacies in accordance with Sections 12 and 13, above.
- C. Annually, or at any time after receiving notice from the City, the Contractor shall, within sixty (60) calendar days, submit a report to City indicating the following:

- D. All refuse collection, composting, and recycling services reported in refuse collection, and recycling industry trade journals that are being commonly provided on an operational basis, excluding tests and demonstrations, to communities in the United States with comparable populations, that are not provided to City; and
1. Changes recommended to improve the City's ability to meet the goals of AB939 and any subsequent legislation.
 2. Any specific plans for provision of such new services by the Contractor, or a justification indicating why Contractor believes that such services are not feasible for the Franchise Area.
 3. A report on the value of recyclables, the revenue obtained through the sale of recyclables, and the expense of collecting and transporting the recyclables.
 4. The City and Contractor hereby acknowledge that the Contractor has based its residential rates in Exhibit "D" and its expectation of meeting AB939 goals, upon the full participation of all residents in the refuse services described herein. The City and Contractor agree to consider reasonable modifications to this Agreement in the event less than adequate participation is achieved.
- E. Topics for discussion and review at the system and services review hearing shall include, but shall not be limited to, services provided, feasibility of providing new services, application of new technologies, customer complaints, rights of privacy, amendments to the Franchise Agreement, developments in the law, new initiatives for meeting or exceeding AB939's goals and regulatory constraints.
- F. City and Contractor may each select additional topics for discussion at any systems and services review hearing.
- G. Not later than sixty (60) days after the conclusion of each system and service review hearing, City shall issue a report. The report shall include a listing of any refuse collection, and considered technically and economically feasible by City. City may require Contractor to provide such services within a reasonable time, for reasonable rates and compensation.

SECTION 19. COMPENSATION.

- A. Contractor Rates. Contractor shall provide the services described in this Franchise Agreement in accordance with the rates fixed by City from time to time, all as described as set forth in the Exhibit "D" "Schedule of Rates", as those rates may be amended by Resolution of City Council.
- B. Modification and Adjustment of Rates. Except as provided in Exhibit "D", the rates set forth on Exhibit "D" shall remain in effect until adjusted by City by Resolution of the City Council.
- C. Basis or Adjustment of Rates and Fees. Based on a finding that revenues from sales of recyclables have been increased or decreased, upon sixty (60) days notice to Contractor of the proposed change in rates, City Council may adopt a resolution adjusting rates proportionate to the increased or decreased cost or sales of recyclables.
- D. Notice of Rate Increases. The Contractor shall provide the City and Customers, written notice of the implementation of changes in any of its rates and charges which are not subject to regulation by the City. The notice shall include a statement of the reasons for the rate increase.
- E. Resolution of Disputes Regarding Rate Adjustments. Any dispute regarding the Annual Rate Adjustment and Landfill Tipping Fee adjustment, or the computation thereof, described in Exhibit "D", or any other dispute regarding Contractor's reimbursement for fees, special services, or extraordinary costs described in Exhibit "D", shall be decided by the City Manager, or referred by the Manager to the City Council, or the hearing officer, as appropriate.
- F. Billing and Payment. Contractor shall bill all customers for all services, whether regular or special. Contractor shall provide itemized bills in a form approved by City, distinctly showing charges for all classifications of services, including the charges for late payment. Billings shall be made monthly in advance, or as determined appropriate by the Contractor, for commercial and all bin service customers, and shall be made monthly in advance for all residential customers.
- G. Delinquent Accounts. Notice shall be given to the property owner of record regarding the account and that any unpaid or delinquent bills may become a lien against the property.

- H. Refunds. Contractor shall refund to each customer, on a pro-rata basis, any advance service payments made by such customer for service not provided when service is properly terminated by the customer.
- I. Recycling Rate Adjustment. The recycling rate includes the following cost and revenue factors: Collection, Transportation, Processing, Non-Recyclable Disposal, Community Education, State, County and City Reporting, and Recyclable Revenue Credits.
- J. Disposal Rate Adjustment. The disposal rate includes all costs above and beyond the operator fee for collection of solid waste including, but not limited to: Transportation, Landfill Tipping Fees, and Regulatory Fees.

Each individual cost factor shall be presented by the Contractor at the time of rate adjustment. The Contractor shall provide supporting documentation and calculations to support the presented cost factors. The City shall retain the right to have a comparative rate study prepared by the Contractor for a disposal facility or program different than the one utilized by the Contractor. The purpose of such rate study would be more beneficial to the City. The City may designate that the Contractor use an alternative facility or program. In any case, disposal rates shall be adjusted to fully compensate Contractor for all disposal rate cost factors as pass-through costs.

SECTION 20. COLLECTION EQUIPMENT.

- A. Contractor shall provide an adequate number of vehicles and equipment for the collection, transportation, recycling, and disposal of solid waste for which it is responsible under this Franchise Agreement. The equipment of Contractor used under this Franchise agreement shall be subject to inspection by City on a semiannual basis but shall not be subject to any permit fees therefor.
 - 1. All vehicles used by Contractor under this Franchise Agreement shall be registered with the Department of Motor Vehicles of the State of California, shall be kept clean and in good repair and shall be uniformly painted. A sufficient supply of parts must be kept on hand to ensure timely and continuous fulfillment of this Franchise Agreement.
 - 2. All bins and containers provided shall be kept in a reasonable condition and appearance.
 - 3. Contractor has agreed to name the specific organization that shall provide all of the services under this Franchise

Agreement, "USA Waste Services" This name shall be used for all correspondence, billing statements, directory listings, references, signs, vehicle identification, etc.

4. Solid waste collection vehicles shall be washed at least once every seven (7) calendar days.
5. "USA Waste Services", a local or toll free telephone number, and vehicle number shall be visibly displayed on all vehicles in letters and figures not less than five inches (5") high.

SECTION 21. PUBLIC ACCESS TO CONTRACTOR.

A. Office Hours. Contractor's office hours shall be, at a minimum, from 8:00 a.m. to 5:00 p.m. daily, on all collection days. A representative of Contractor shall be available during office hours for communication with the public at Contractor's principal office. In the event that normal business problems cannot be rectified over the telephone, a representative of Contractor shall agree to meet with the public at a location agreeable to Contractor and the public. Normal office hours telephone numbers shall either be a local or toll free call. Contractor shall also maintain a local or toll free after hours telephone number for answering service available at said after-hours telephone number during all hours other than normal office hours.

B. 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 its best efforts to resolve all complaints by close of business (waste collection) day following the date on which such complaint is received. Service complaints may be investigated by the City Manager or the Manager's designee. Unless a settlement satisfactory to complainant, the Contractor, and the Manager's designee is reached, the complainant may refer the matter to the City Manager for review.
- (2) Contractor shall maintain records listing the date of consumer 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 and shall be available for inspection by City, as described in Section 26. Contractor shall prepare monthly summaries of consumer complaints. The summaries shall be available and delivered monthly to the City Manager or the City Manager's designated representative.

- C. Government Liaison Person. The Contractor shall designate a "government liaison person" who shall be responsible for working with the City Manager or the City Manager's designated representative to resolve customer complaints.

SECTION 22. CUSTOMER SERVICES.

- A. Suspension of Service: Customers may suspend service for a period of not less than one (1) month without penalty. Requests for suspension for periods less than one (1) month will be subject to a fee of \$10.00 per request.

SECTION 23. RESOLUTION OF DISPUTED CUSTOMER COMPLAINTS.

- A. The Contractor shall notify customers of this complaint resolution procedure at the time customers apply for or are provided service.
- B. A customer dissatisfied with Contractor's decision regarding a complaint may ask the City to review the complaint. To obtain this review, the customer must request City review within 30 days of receipt of Contractor's response to the Complaint, or within 45 days of submitting the complaint to the Contractor, if the Contractor has failed to respond to the complaint. The City may extend the time to request its review for good cause.
- C. Before reviewing the complaint, the City Manager shall refer it to the Contractor. If the Contractor fails to cure the complaint within ten (10) days, the City Manager shall review the customer's complaint and determine if further action is warranted. The City Manager may request written statements from the Contractor and customer, and/or oral presentations.
- D. The City Manager shall determine if the customer's complaint is unresolved, and if so, what 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.

- E. The City Manager may delegate these duties to a designee. The decision of the City Manager or his designee shall be final on any matter under **Five Thousand Dollars (\$5,000.00)**. In the event of a decision on a matter awarding **Five Thousand Dollars (\$5,000.00) or more**, Contractor may seek review pursuant to Section 13, above.

SECTION 24. OWNERSHIP OF SOLID WASTE.

- A. Once solid waste, compostables, recyclables, and construction debris are placed in bins/roll-offs for collection, or containers at curbside, ownership shall transfer to Contractor, subject to the terms of this Franchise Agreement, by operation of law. Subject to Contractor's duty to meet the source reduction and recycling goals which apply to City, Contractor is hereby granted the right to retain, recycle, compost, dispose of, and otherwise use such refuse, compostables, recyclables, construction debris, or any part thereof, in any lawful fashion or for any lawful purpose desired by Contractor. Subject to the provisions of this Franchise Agreement, Contractor shall have the right to retain any benefit or profit resulting from its right to retain, recycle, compost, dispose of, or use the refuse, compostables, recyclables, green waste, and construction debris, or any part thereof, which is disposed of at a disposal site or sites (whether landfill, transformation facility, transfer station, or material recovery facility) shall become the property of the owner or operator of the disposal site or sites once deposited there by Contractor. At no time does City obtain any right of ownership or possession of solid waste placed for collection, and nothing in this Franchise Agreement shall be construed as giving rise to any inference that City has such rights. Contractor shall conduct an annual rate audit and recommend, if necessary, a rate adjustment, including a reduction in rates to reflect an increase in the value of recyclables.

SECTION 25. INDEMNIFICATION AND INSURANCE.

- A. Indemnification of City. Contractor agrees that it shall protect, defend with counsel approved by City, indemnify, and hold harmless City, its officers, employees, and agents and at no cost to City, from and against any and all losses, liabilities, fines, penalties, claims, damages, liabilities, including attorney's fees, arising out of or resulting in any way from Contractor's exercise of this Franchise, unless such claim is due to the sole negligence or willful acts of the City, its officers, employees, agencies, or contractors, or from the City's grant of this Franchise to Contractor. Subject to the scope of this indemnification and upon demand of the City, made by and through the City Attorney, the Contractor shall appear in and defend the City and its officers,

employees, and agents in any claims or actions, whether judicial, administrative, or otherwise arising out of the exercise of the Franchise Agreement. This provision is in addition to all other provisions of this Agreement and is intended to apply to Contractor's actions during the term of this Agreement and survive the end of the term of this Agreement.

- B. Indemnification of Contractor. The City shall indemnify, defend and hold the Contractor, its affiliates and their respective officers, directors, employees, and shareholders harmless from and against any and all liabilities, losses, damages, claims, actions, causes of action, judgments, costs, and expenses (including reasonable attorney's fees) arising from or in any manner related to the sole negligence or willful acts of the City, its officers, employees, agents, or contractors. Subject to the scope of this indemnification and upon demand of the Contractor, made by and through its attorney, the City shall appear in and defend the Contractor and its officers, employees, and agents in any claims or actions whether judicial, administrative, or otherwise arising out of the exercise of the Franchise Agreement.
- C. Household Hazardous Substances Indemnification. Contractor shall indemnify, defend with counsel approved by City, protect and hold harmless City, its officers, employees, agents, assignees, and any successor or successors to City's interest from and against all claims, actual damages (including but not limited to special and consequential damages), natural resources damage, punitive damages, injuries, costs, response, 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 attorneys' 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, City or its officers, employees, agents, or Contractors arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any household hazardous substance or household hazardous wastes at any place where Contractor stores or disposes of municipal solid waste or construction debris pursuant to this Franchise Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107 (e) of the Comprehensive Environmental Response, Compensation and Liability Act, "CERCLA", 42 U.S.C. Section 9607 (e) and California Health and Safety Code Section 5364, to insure, protect, hold harmless, and indemnify City from liability.

This provision is in addition to all other provisions of this Agreement and is intended to apply to Contractor's actions during the term of this Agreement and survive the end of the term of this Agreement.

- D. AB939 Indemnification. Contractor agrees to protect, defend, with counsel approved by the City, and indemnify City against all fines or penalties imposed by the California Integrated Waste Management Board in the event the source reduction and recycling goals or any other requirement of AB939 are not met by City with respect to the waste stream covered by this Franchise Agreement, or Contractor's delays in providing information prevent City from submitting reports required by AB939 in a timely manner. Contractor further agrees to appear and represent the City in any appeals proceedings and/or litigation brought against City for alleged failure to comply with AB939. One year prior to each compliance reporting date pursuant to AB939, or at any time prior to the reporting date within that one year period, if in the opinion of the City, based upon information provided by the Contractor and the State of California, the City is not reasonably convinced that the Contractor will be in non-compliance, the City may require Contractor to provide a performance bond in the amount of **FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00)** until such time as compliance is attained.
- E. Worker's Compensation Insurance. Contractor shall obtain and maintain in full force and effect throughout the entire term of this Franchise Agreement full Worker's Compensation Insurance in accord with the provisions and requirements of the Labor Code of the State of California. Endorsements that implement the required coverage shall be filed and maintained with the City Clerk throughout the term of this Franchise Agreement. The policy providing coverage shall be amended to provide that the insurance shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City. The policy shall also be amended to waive all rights of subrogation against the City, its elected or appointed officials, employees, agents, or Contractors for losses which arise from work performed by the persons insured for the City.
- F. Public Liability Insurance. The limits of such insurance coverage, and companies, if any, shall be subject to review. Contractor shall obtain and maintain in full force and effect throughout the entire term of this Franchise Agreement a Broad Form Comprehensive General Liability (occurrence) policy with a minimum limit of **FOUR MILLION DOLLARS (\$4,000,000.00) aggregate** and **ONE MILLION DOLLARS (\$1,000,000.00) per occurrence** for bodily injury and property damage, with any self-insured

retention not exceeding **TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) per occurrence**. Said insurance shall protect Contractor and City from any claim for damages for bodily injury, including accidental death, as well as from any claim for property damage which may arise from operations performed pursuant to this Franchise Agreement, whether such operations be by Contractor itself, or by its agents, employees, and/or sub-contractors. Copies of the endorsements evidencing the above required insurance coverage shall be filed with the City Clerk. All of the following endorsements are required to be made a part of the insurance policies required by this Section:

- (1) "The City, its employees, agents, Contractors, and officers, are hereby added as insureds as respects liability arising out of activities performed by or on behalf of Contractor."
- (2) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance and shall not contribute with it."
- (3) "This insurance shall act for each insured, as though a separate policy had been written for each. This, however, shall not act to increase the limit of liability of the insuring company."
- (4) "Thirty (30) days prior written notice by certified mail, return receipt requested, shall be given to the City in the event of suspension, cancellation, reduction in coverage or in limits, or non-renewal of this policy for whatever reason. Such notice shall be sent to the City Clerk."

The limits of such insurance coverage, and companies, shall be subject to review and approval by the City Manager every year and may be increased at that time and match the coverage provided by the City's own liability insurance policy. The City shall be included as an additional insured on all policies and endorsements. The requirements of this section may be satisfied in whole or in part by Contractor's self-insurance program.

- G. Modification. The insurance requirements provided herein may be modified or waived in writings by the City Council upon the request of Contractor, or in the sole discretion of the City provided the City Council determines such modification or waiver is in the best interests of City

considering all relevant factors, including the fact that the parent of Contractor may be self-insured up to a certain acceptable amount.

SECTION 26. CONTRACTOR'S BOOKS AND RECORDS: AUDITS.

- A. Contractor shall maintain in auditable form all records relating to the services provided hereunder, including, but not limited to, customer lists, billing records, accounts receivable records, maps, AB939 compliance records, and customer complaints, for the full term of this Franchise Agreement, and an additional period of not less than three (3) years, or any longer period required by law or by the City. The City shall have the right, upon five (5) business days advance notice, to inspect all maps, AB939 compliance records, customer complaints, and other like materials of the Contractor which reasonably relate to Contractor's compliance with the provisions of the Franchise Agreement. Such records shall be made available to City at Contractor's regular place of business, but in no event outside the County of San Bernardino.
- B. Should any examination or audit of Contractor's records reveal an underpayment of any fee required under this Franchise Agreement, the amount of such underpayment of any fee required under this Franchise Agreement, the amount of such underpayment shall become due and payable to City with interest at the legal rate of seven percent (7%) not later than fifteen (15) days after written notice of such underpayment is sent to Contractor by City. Should any underpayment of more than three percent (3%) be discovered, Contractor shall bear the entire cost of the audit.

SECTION 27. GENERAL PROVISIONS.

- A. Force Majeure. Contractor shall not be in default under this Franchise Agreement in the event that the temporary bin/roll-off services and the collection, transportation, recycling, composting, and disposal of solid waste and construction debris provided by the Contractor are temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, civil disturbances, insurrections, explosion, natural disasters such as floods, earthquakes, landslides, and fires, strikes, lockouts, and other labor disturbances or other catastrophic events which are beyond the reasonable control of Contractor. Other catastrophic events do not include the financial inability of the Contractor to perform or failure of the Contractor to obtain any necessary permits or licenses from other governmental agencies or 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 temporary

bin/roll-off services and the collection, transportation, recycling, composting, and disposal of solid waste and construction debris by Contractor as required under this Franchise Agreement, City may elect to exercise its rights under Section 15 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 Franchise 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 employees.
- C. Pavement Damage. Contractor shall be responsible for any damage, due to Contractor's negligence, to City's driving surfaces or other City property, whether or not paved, resulting from overweight vehicles providing refuse collection and temporary bin/roll-off services directly attributable and at the location of bins, roll-offs, and containers on public or private property.
- D. Property Damage. Any physical damage to public or private property, or other City property caused by the negligent or willful acts or omissions of Contractor, its employees, agents, or sub-contractors shall be repaired or replaced by Contractor.
- E. Right of Entry. Contractor shall have the right, until receipt of written notice revoking permission to pass is delivered to Contractor, to enter or drive on any public or private street, court, place, easement, or other private property necessary for the purpose of providing temporary bin/roll-off services and the collection, transportation, recycling, composting, and disposal of solid waste and construction debris pursuant to this Franchise Agreement.
- F. Law to Govern: Venue. The law of the State of California shall govern this Franchise Agreement. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of San Bernardino. In the event of litigation in U.S. District Court, exclusive venue shall lie in the Central District of California.
- G. Fees and Gratuities. Contractor shall not, nor may it permit any agent, employee, or sub-contractor to request, solicit, or demand either directly or indirectly, any compensation or gratuity for temporary bin/roll-off services and the collection, transportation, recycling, composting, and

disposal of solid waste and construction debris except as otherwise required under this Franchise Agreement.

- H. Prior Agreement and Amendment. This Franchise Agreement is intended to carry out City's obligations to comply with the provisions of the California Integrated Waste Management Act of 1989, (AB939) as it from time to time may be amended, and as implemented by regulations of the California Integrated Waste Management Board (Regulations), as they from time to time may be amended. In the event that AB939 or other State or Federal laws or regulations enacted after this Franchise has been enacted, prevent or preclude compliance with one or more provisions of this Franchise Agreement, such provisions of the Franchise shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations. Except as otherwise provided herein, no other amendment of this Franchise Agreement shall be valid unless in writing duly executed by the parties. Any modifications as provided by Section 19.
- I. Compliance with Franchise Agreement. Contractor shall comply with those provisions of the San Bernardino County Code as adopted by the City of Grand Terrace, as well as any ordinances, resolutions or regulations enacted by the City of Grand Terrace which are applicable and with any and all amendments to such applicable provisions during the term of this Franchise Agreement.
- J. Notices. All notices required or permitted to be given under this Franchise shall be in writing and shall be personally delivered or sent by telecopier (fax), or United States Certified Mail, postage prepaid, return receipt requested, and addressed as follows:

To City: City of Grand Terrace
22795 Barton Road
Grand Terrace, CA 92313
Attn: City Manager
Fax: (909) 783-7629

To Contractor: USA Waste of California, Inc.
800 S. Temescal St.
Corona, CA 91719
Attn: District Manager
Fax: (909) 734-5630

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


- K. Savings Clause and Entirety. If any non-material provision of this Franchise Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or un-enforceability of such provision shall not affect the validity and enforceability of any of the remaining provision of the Franchise Agreement. If any material provision of this Franchise Agreement shall be held to be invalid or unenforceable, the entire Franchise Agreement may be declared by either party to be terminated and void subject to those rights which may have existed prior to the date of this Agreement.

- L. Exhibits Incorporated. Exhibits "A" through "E" are attached to and incorporated into this Franchise Agreement by reference.

- M. Identification Required.
 - (1) Contractor shall provide its employees, and sub-contractors with identification for all individuals who may make personal contact with residents of the City.


 - (2) The Contractor shall provide a list of current employees, Contractors and sub-contractors, to the City upon request. The City may require the Contractor to notify customers yearly of the form of said identification.

PASSED, APPROVED, AND ADOPTED this 26 day of June, 1997.



Mayor of the City of Grand Terrace and to
the City Council thereof.

ATTEST:



CITY CLERK

APPROVED AS TO FORM:


CITY ATTORNEY


STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)ss.
CITY OF GRAND TERRACE)

I, **BRENDA STANFILL, CITY CLERK** of the **CITY OF GRAND TERRACE, CALIFORNIA**, DO HEREBY CERTIFY that the foregoing Franchise Agreement was duly passed, approved and adopted by the City Council, approved and signed by the Mayor, and attested by the City Clerk, all at the meeting of said City Council held on the 26th day of June, 1997, and that the same was passed and adopted by the following vote:

- AYES: Councilmembers Hilkey, Singley, and Garcia; Mayor Pro Tem Buchanan; Mayor Matteson
- NOES: None
- ABSENT: None
- ABSTAIN: None


CITY CLERK
CITY OF GRAND TERRACE

IN WITNESS WHEREOF: The parties hereto, on the day and year first written above, have executed this Agreement.

USA Waste of California, Inc

Vice President

BY: 
City Manager, City of Grand Terrace

BY: 
Mayor, City of Grand Terrace, California

ATTEST:

BY: Brenda Stanfill
City Clerk, City of Grand Terrace

APPROVED AS TO FORM:

BY: John Hagan
City Attorney

EXHIBIT A
FRANCHISE AREA

All portions of the City shown on the existing Official Map of the City of Grand Terrace Corporate Limits on file at the City of Grand Terrace or as subsequently modified by future annexations.

EXHIBIT B
SPECIAL WASTES

Flammable waste.

Containerized waste (e.g. drum, barrel, portable tank, box, pail, etc.).

Waste Transported in a bulk tanker.

Liquid Waste.

Sewage sludge.

Waste from a pollution control process and/or industrial process.

Residue and debris from the cleanup of a spill or release of chemical substances, commercial products or any other special wastes.

Contaminated soil, waste, residue, debris, and articles from the cleanup of a site or facility formerly used for the generation, storage, treatment, recycling, reclamation, or disposal of any other special wastes.

Dead animals and/or slaughterhouse waste.

Manure.

Waste water.

Explosive substances.

Radioactive Materials.

Hazardous Materials as defined by state and federal law.

Friable and/or nonfriable asbestos waste.

Empty containers which have been used for pesticides, herbicides, fungicides, or rodenticides.

Waste which is prohibited from disposal at a Class III Landfill.

Waste which has been rejected from disposal at a landfill.

EXHIBIT "C"
RECYCLING PROGRAMS, SERVICE COMMENCEMENT
AB939 TOPICS, AND FACILITY CONSIDERATIONS

- A. Contractor guarantees to City that it shall cause at least twenty-five percent (25%) at the time specified by AB939 and subsequently fifty percent (50%) of the waste stream collected under this Franchise Agreement to be diverted from ultimate deposit in landfills in accordance with the regulations implementing the California Integrated Waste Management Act of 1989 (as amended) (also known as AB939). Contractor shall implement alternatives identified in the City's Source Reduction and Recycling Element (SRRE) and Household Hazardous Wastes Element (HHWE). Contractor shall be responsible to implement the public education and awareness portions of the SRRE and HHWE, at Contractor's expense. Contractor shall provide City with written reports in a form adequate to meet City's reporting requirements to the California Integrated Waste Management Board and to the County of San Bernardino throughout the term of this Franchise wherein its performance under this program is set forth in detail.
- B. Upon commencement of the Franchise Agreement, Contractor shall commence regular refuse service to all residential dwelling units and commercial establishments within the City as set forth in Section 5. The residential refuse service shall include the pick up of recyclable materials and green waste. The operator shall furnish one container for recyclable of not less than 18 gallon size to each residential customer who desires to participate in the curbside recycling program. Contractor shall replace and repair container as may be necessary as a result of normal wear and tear. The Contractor shall be permitted to bill all customers according to the rates set forth in Schedule "D": at the beginning of said month. In the event a residential customer has not then received a recycling container, the recycling charge included in the rate shall be postponed until the first month after delivery of the container.
- D. The franchise fee as defined in Section 10 shall apply to all residential operator pickup fees shall be included for franchise fee computation purposes.
- E. Contractor shall implement a mechanized residential container system. Mechanized shall mean that Contractor shall provide collector trucks that are capable of picking up containers, emptying them into the collector truck, and then returning them to the curbside without any human handling of the container.

- F. The failure of Contractor to achieve any of the above shall be deemed a material breach of this Franchise Agreement.

EXHIBIT "D"
SCHEDULE OF RATES

1. SINGLE FAMILY RESIDENTIAL SERVICE RATE

Single family service rates shall be based on the following formula.

FORMULA: Contractor's pick-up fee + Landfill Fee (Based upon average tons per home) + Green Waste Charge + Recycling Charge + Household Hazardous Waste Fee + Franchise Fee

The Franchise Fee Calculation will be 10% of the Contractors pick-up Charge + Landfill Fee + Green Waste Charge + Recycling Charge

Beginning October 1, 1996 the Single Family Residential Rates will be as follows:

68 Gallon Container: \$16.78 based on the following:

Contractors Pick-up Fee	\$10.80
Landfill Charge (Based upon .78 tons per home per year at \$33 per ton)	\$2.15
Green Waste Charge (Based upon 30% or .48 tons per year diversion at \$16.25 per ton)	\$.65
Recycling Charge	\$1.47
Franchise Fee	\$1.51 (10% of Gross)
Household Hazardous Waste Fee	\$.20

96 Gallon Container: \$17.80 per month based on the following:

Contractors Pick-up Fee	\$10.80
Landfill Charge (Based upon 1.12 tons per home per year at \$33 per ton)	\$3.09
Green Waste Charge	\$.65
Recycling Charge (Based upon 30% or .48 tons per year diversion at \$16.25 per ton)	\$1.47

Franchise Fee \$1.60 (10% of Gross)

Household Hazardous Waste Fee \$.20

2. MULTI-FAMILY SERVICE RATE:

Bin service rates for multi-family units shall be the same as adopted for commercial bin service.

3. ADDITIONAL SPECIAL SERVICE RATES.

A. "On Demand" appliance and bulky item pickup at ground level – first item \$25.00 and \$15.00 for each additional item.

B. All persons qualifying as handicapped by the City shall be entitled to free carryout service to the collection vehicle. The operator may charge for such carryout service for any other customer who requests it at the rate of \$9.03 per month.

C. Special enclosure cleanup service as described in Section 5.g(3) above, shall be charged at the rate of \$45.00 per hour, portal to portal. Special cleanup service by pickup truck requested by any customer shall be charged at \$45.00 per hour plus any applicable landfill fees. If a compactor refuse truck is necessary, the charge shall be \$45.00 per hour plus any applicable landfill fees.

D. Individuals shall be entitled to a reasonable discount of the operators service pickup fee in accordance with the Ordinance. Contractor may, at its discretion, offer low income customers the same discount offered by Southern California Edison.

E. Exemption from mandatory service shall be in accordance with the Ordinance. Contractor may, at its discretion, credit the landfill component of the monthly bill for customers who are on vacation for at least 30 consecutive days. Contractor may, at its discretion, charge no monthly rate for a home that is uninhabited and receives no service. Contractor may require property owners to sign a "Vacancy Certificate" at least every six months. If Contractor's field audit discovers that a house certified to be vacant, is inhabited, Contractor may retroactively charge the property owner to the date of the Vacancy Certificate.

F. A "Service Change" fee in the amount of \$20.00 may be charged each time a customer changes to a different service level. The operator will select one calendar month per year, during which month, "Service

Change” fees will be waived for any customer requesting a change in their service level. Customers will be notified by operator regarding the availability of this change option.

4. ANNUAL ADJUSTMENT OF RATES.

As of July 1st of each year, the above refuse rates shall be adjusted as follows:

- A. The landfill fee portion of each rate designated above shall be adjusted in accordance with an increase or decrease percentage to correspond with any increase or decrease percentage in the landfill fee charged by the County of San Bernardino.
- B. The contractor's pickup fee designated above shall be adjusted in accordance with the San Bernardino County refuse rate adjustment policy. Any adjustment in excess of 5% shall be subject to approval by the City Council before implementation by the operator. If the San Bernardino County refuse rate adjustment policy is hereafter discontinued or significantly amended, the operator's pickup fees shall be adjusted by 90% of the annual change in successive indexes as of the month of March, per the “Consumer Price Index, Los Angeles–Anaheim (unadjusted), All Urban Consumers, All Items” as published by the Bureau of Labor Statistics.

5. EXTRAORDINARY ADJUSTMENT OF RATES.

Subject to the approval of City Council, the operator may request special rate adjustments in the event its operating conditions significantly change, i.e., the County of San Bernardino or the City directs the operator to a different landfill, there is a change in State or Federal laws applicable to the operators refuse business, or there is a significant change in the County's collection of tipping fees and fees to operate the Household Hazardous Waste program.

6. SCHEDULE OF FRANCHISE FEES.

- A. The contractor shall pay to the City a franchise fee of 10% gross revenues.

7. NON-PAYMENT.

Contractor reserves the right to stop service after the customer is 60 days late or longer. Contractor will then have the option to confiscate the

container. Reinstatement of the account along with delivery of the container will be \$20.00.