

RESOLUTION NO. 3479-2011

RESOLUTION OF THE FORT BRAGG CITY COUNCIL AUTHORIZING CITY MANAGER TO EXECUTE SECOND AMENDMENT TO SOLID WASTE FRANCHISE AGREEMENT BETWEEN CITY OF FORT BRAGG AND USA WASTE OF CALIFORNIA, INC. DBA EMPIRE WASTE MANAGEMENT

WHEREAS, on January 8, 2007, the Fort Bragg City Council approved the Franchise Agreement ("Agreement") between the City of Fort Bragg ("City") and USA Waste of California, Inc. dba Empire Waste Management ("WM") for solid waste collection and disposal services within the City of Fort Bragg; and

WHEREAS, on February 23, 2009, the Fort Bragg City Council approved the first amendment to the Agreement; and

WHEREAS, WM has requested that the term of the Agreement under Section 4(A)(2) be extended to June 30, 2021; and

WHEREAS, as consideration for the extension of the term of the Agreement WM has agreed to deliver to the City a check in the amount of \$350,000.00, payable to City, as a contract extension fee to be used for public benefit purposes at City's sole discretion; and

WHEREAS, failure of WM to make this payment within 30 days of the date of this Agreement shall be grounds for City, at its sole discretion, to revoke and terminate this 2nd Amendment; and

WHEREAS, WM has requested that the requirement that an annual financial report be provided be removed from the contract; and

WHEREAS, WM has agreed to carry liability insurance coverage of \$5 million per occurrence with indemnification of the City and County; and

WHEREAS, based on all the evidence presented, the City Council finds as follows:

1. The proposed changes to the Agreement between the City and WM are reasonable and do not disadvantage the City.
2. Extending the termination date of the contract will be beneficial to the public as it provides for rate stability and aligns the contract termination date with that of the adjoining Mendocino County Franchise Area No. 2.
3. The \$350,000 contract extension fee will be used by the City for public benefit purposes.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby authorize the City Manager to execute the Second Amendment to the Solid Waste Franchise Agreement between the City of Fort Bragg and USA Waste of California, Inc. dba Empire Waste Management.

The above and foregoing Resolution was introduced by Councilmember Gjerde, seconded by Councilmember Courtney, and passed and adopted at a regular meeting of

the City Council of the City of Fort Bragg held on the 22nd day of August, 2011, by the following vote:

AYES: Councilmembers Courtney, Gjerde, Hammerstrom, Melo, and Mayor
Turner.
NOES: None.
ABSENT: None.
ABSTAIN: None.

A handwritten signature in black ink, appearing to read 'Dave Turner', is written over a horizontal line.

DAVE TURNER,
Mayor

ATTEST:



Cynthia M. VanWormer, CMC
City Clerk

EXHIBIT "A"

**AMENDMENT NO. 2 TO FRANCHISE AGREEMENT BETWEEN THE CITY OF
FORT BRAGG AND USA WASTE OF CALIFORNIA INC., DBA EMPIRE WASTE
MANAGEMENT**

This second amendment ("2nd Amendment") to the 2007 Franchise Agreement between USA Waste of California, Inc., dba Empire Waste Management, hereinafter called "GRANTEE", and the City of Fort Bragg, hereinafter called "CITY," is made this 23rd day of August, 2011 at Fort Bragg, California.

WHEREAS, CITY and GRANTEE entered into the Franchise Agreement (the "Agreement") for the collection, transportation, and disposal of solid waste in the CITY on January 8, 2007; and

WHEREAS, Grantee has satisfactorily performed its obligations under the Agreement; and

WHEREAS, it is in the public interest to revise and extend the Agreement until June 30, 2021, subject to the terms and conditions set forth in this 2nd Amendment;

WHEREAS, the Parties hereto agree that notwithstanding any terms and/or conditions set forth herein, this 2nd Amendment shall be null and void and of no force or effect unless and until the County of Mendocino enters into an amendment extending the term of its current Franchise Agreement with USA Waste of California, Inc. dba Empire Waste Management to June 30, 2021;

NOW THEREFORE, it is agreed as follows:

1. The term of the Agreement under Section 4(A)(2) is extended to June 30, 2021.
2. Within 30 days of execution of this 2nd Amendment, Grantee shall deliver to City a check in the amount of \$350,000.00, payable to City, as a contract renewal fee to be applied at City's discretion for public benefit purposes. Failure of Grantee to make this payment within 30 days shall be grounds for City, at its sole discretion, to revoke and terminate this 2nd Amendment.
3. Section 13(I), Annual Financial Report, is amended to remove the requirement that GRANTEE employ an independent certified public accountant to prepare the reports required under this subsection. All other requirements for the financial report shall remain in effect. CITY may conduct independent audits of GRANTEE's operations pursuant to the Agreement at CITY's expense.
4. Section 17(B)(2) is amended to require a Broad Form Comprehensive General Liability (occurrence) policy with a minimum limit of FIVE MILLION DOLLARS (\$5,000,000.00) per occurrence for bodily injury and property damage.

5. Save and except as amended hereby, and by the First Amendment, the terms and conditions of the Agreement shall remain in full force and effect.

CITY OF FORT BRAGG

USA WASTE OF CALIFORNIA, INC.

By: _____
Linda Ruffing, City Manager

ATTEST:

Cynthia M. VanWormer, CMC, City Clerk

APPROVED AS TO FORM:

Michael Gogna, City Attorney