



CONCURRENT MEETING
CITY COUNCIL/SUCCESSOR AGENCY TO
THE CRA/RCFC

Monday, December 17, 2012

5:00 PM – Closed Session

5:30 PM – Regular Meeting

AGENDA

David Sander, Mayor

Linda Budge, Vice Mayor

Robert J. McGarvey, Council Member

Dan Skoglund, Council Member

Donald Terry, Council Member



Regular City Council meeting dates are scheduled on the 1st and 3rd Monday's of each month, unless when Monday is a holiday.
If Monday is a holiday, the meeting will be scheduled for the following Tuesday. Dates are subject to change.

City Council Regular Mtg	CANCELLED MTG	City Council Special Mtg	CANCELLED MTG	CITY HALL CLOSED
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**CONCURRENT MEETING
CITY COUNCIL/SUCCESSOR AGENCY TO THE COMMUNITY REDEVELOPMENT
AGENCY (CRA)/RANCHO CORDOVA FINANCING CORPORATION (RCFC)**

**City Hall
2729 Prospect Park Drive, Rancho Cordova**

Monday, December 17, 2012

**5:00 PM – Closed Session
Community Board Room**

**5:30 PM – Regular Meeting
David B. Roberts Council Chambers**

AGENDA

1. CLOSED SESSION - CALL TO ORDER/ROLL CALL

Council Members Budge, McGarvey, Skoglund, Terry, and Mayor Sander.

2. CLOSED SESSION

Council will meet in Closed Session to discuss the following item(s):

Conference with legal counsel, anticipated litigation (Government Code Section 54956.9 (b)), one (1) potential case.

3. ADJOURNMENT

Mayor Sander will adjourn the Closed Session to the Regular Meeting in the David B. Roberts Council Chambers.

4. REGULAR MEETING - CALL TO ORDER / ROLL CALL

Council Members Budge, McGarvey, Skoglund, Terry, and Mayor Sander..

5. METRO CABLE TV TELEVISION ANNOUNCEMENT

The Clerk will announce the meetings video recording and playback schedules.

6. PLEDGE OF ALLEGIANCE

The Mayor will call on Boy Scout Webelos Den Pack 305 to Perform the Flag Ceremony and Lead the Pledge of Allegiance.

7. INVOCATION

Mark Shetler, First Covenant Church will give the invocation.

8. OPEN SESSION - REPORT FROM CLOSED SESSION

The City Attorney will report on action taken in Closed Session.

9. SPECIAL CEREMONIES

- 9.1 Swearing in of Vice Mayor Dan Skoglund by Son John Skoglund.
- 9.2 Swearing in of Mayor Linda Budge by Mother Norma Niblett.
- 9.3 Presentation to Outgoing Mayor David Sander by Incoming Mayor Linda Budge.
- 9.4 Presentation to Outgoing Mayor David Sander by Scottie Moore.

10. CELEBRATORY BREAK

11. PRESENTATIONS

- 11.1 Presentation of Proclamation to Seneca Wallace for Contributions to the Community.
- 11.2 Cordova Community Council 2012 Year End Review by Executive Director Shelly Blanchard.
- 11.3 Update on Results from Business Walk by Micah Runner, Economic Development Manager, Diann Rogers, Rancho Cordova Chamber of Commerce Executive Director, and Matt Yancey, Sacramento Metro Chamber of Commerce Director of Business & Economic Development.
- 11.4 Update on Entertainment Center by Micah Runner, Economic Development Manager.
- 11.5 Introduction of New City Employee Scott Sparks by Neighborhood Services Manager, Kerry Simpson.

12. PUBLIC COMMENT

Citizens wishing to address the Council for any matter on the Consent Calendar or not on the agenda may do so at this time by completing and submitting a Speaker Card to the City Clerk. For items on the agenda, speakers will be called up to the podium by the Mayor at the point on the agenda when the item will be heard. Speakers are encouraged to keep comments to three minutes or less and to state name and community of residence.

Note, under the provisions of the California Government Code, the City Council is prohibited from discussing or taking immediate action on any unagendized item unless it can be demonstrated to be of an emergency nature or the need to take immediate action arose after the posting of the agenda.

13. COUNCIL REPORTS

14. CONSENT CALENDAR ITEMS - ROLL CALL VOTE

- 14.1 **Subject:** Meeting Minutes of December 3, 2012 Regular Meeting.
Recommendation: Adopt Minutes.
- 14.2 **Subject:** Ordinance Granting a Water Franchise to the Golden State Water Company.
Recommendation: Waive second reading and adopt Ordinance No. 20-2012
Result of Recommended Action: Passage of this ordinance will grant water franchise to the Golden State Water Company for the purpose of operating and maintaining water pipelines within the City's rights-of-way.
Staff Report: Cyrus Abhar, Public Works Director.
Advances Goals:5
- 14.3 **Subject:** Ordinance Amending Sections of Chapter 16.20, "Housing Code," of the Rancho Cordova Municipal Code Relating to Rental Housing Inspection Violation Fees.
Recommendation: Waive second reading and adopt Ordinance No. 19-2010. (**Roll Call Vote**).
Result of Recommended Action: Adoption of Ordinance No 19-2012 will amend portions of the Housing Code to allow rental property owners to pay lower fees if they quickly correct minor code violations discovered during an inspection; and amend the Municipal Code to allow fees to be set by resolution. Adoption of this Ordinance also amends the code to reflect recent court decisions regarding consent to enter a rental property and the authority to charge inspection fees.
Staff Report: Kerry Simpson, Neighborhood Services Manager.
Advances Goals: 1, 2, and 3.
GROWING STRONG NEIGHBORHOODS

- 14.4 **Subject:** A Resolution Authorizing Approval of Contract 103-2012, Which Allows the City Manager to Enter into a Professional Services Agreement with Willdan Engineering for the Provision of Loan Management services needed for the CalHOME Owner-Occupied Residential Rehabilitation Program.

Recommendation: Adopt Resolution No 117-2012.

Result of Recommended Action: Adoption of Resolution No. 117-2012 will approve contract 103-2012 with Willdan Engineering, who will provide various loan management services for the Owner-Occupied Residential Rehabilitation Program under the CalHOME grant funded by the California Department of Housing and Community Development.

Staff Report: Reed Flory, Jessica Hayes and Dana Grossi, Housing Services Division.

Advances Goals: 1, 2, and 3.

GROWING STRONG NEIGHBORHOODS

- 14.5 **Subject:** Resolution Authorizing the City Manager to apply for 1% Loan Financing From the California Energy Commission to Conduct Citywide Street Light Retrofits.

Recommendation: Adopt Resolution 118-2012.

Result of Recommended Action: Council adoption of Resolution 118-2012 will result in approval of five actions: 1.) City Manager authorized to submit application for 1% loan financing for street light retrofits; and 2.) City Council finds that the street light retrofit project is categorically exempt under California Environmental Quality Act (CEQA) regulations; and 3.) Upon loan approval from the California Energy Commission ("CEC"), City Manager is authorized to accept loan financing in an amount up to two million (\$2,000,000) dollars to conduct street light retrofits; and 4.) Authorizes the payback of loan financing, plus interest, from energy and maintenance cost savings; and 5.) Authorizes City Manager to execute all documents necessary in order to carry out the street light retrofit project with CEC 1% loan financing.

Staff Report: Cyrus Abhar, Public Works Director, and David Gassaway, Management Analyst.

Advances Goals: 1,2,5,6

- 14.6 **Subject:** Resolution of Intention to Establish a Community Facilities District and Future Annexation Area No. 2013-1 (Storm and Flood Protection Services).

Recommendation: Adopt Resolution No. 121-2012.

Result of Recommended Action: Action on this item will declare the Council's intention to establish the Community Facilities District and Future Annexation Area No. 2013-1 (Storm and Flood Protection Services) and a future annexation area, designate the name of the district, state the Council's intention to levy a special tax to pay for storm and flood protection services, and set 5:30 p.m. on January 22, 2013 as the time and date for a public hearing on the matter.

Staff Report: Cyrus Abhar, Public Works Department.

Advances Goal: 5.

- 14.7 **Subject:** Resolution Temporarily Suspending the Annual Program Fee Inflationary Adjustment for Community Facilities Impact Fees (CFF).
Recommendation: Adopt Resolution 114-2012 temporarily suspending the automatic annual program fee inflationary adjustment for a period of one year for the community facilities impact fees.
Result of Recommended Action: Adoption of the Resolution will suspend, for the third consecutive year, the automatic annual Engineering News Record (ENR) inflationary adjustment for the community facilities impact fees beginning January 1, 2013. This suspension will be for a period of one year.
Staff Report: Donna Silva, Finance Department
Advances Goal: 5.
- 14.8 **Subject:** Resolution of Intention to Establish Police Services Community Facilities District No. 2013-2.
Recommendation: Adopt Resolution 122-2012.
Result of Recommended Action: Adoption of the Resolution will declare Council's intention to establish the Community Facilities District, designate the name of the district, undertake proceeding to provide for future annexation of territory to the proposed district and set a public hearing on this matter for January 21, 2013.
Staff Report: Donna Silva, Finance Department.
Advances Goal: 5.

15. CONSENT PUBLIC HEARING ITEMS - ROLL CALL VOTE

- 15.1 **Subject:** Ordinance Amending Rancho Cordova Municipal Code Chapters 6.20 and 6.21 on Solid Waste and Recycling; Resolution Granting the Public Works Director the Authority to Negotiate and Execute non-exclusive commercial solid waste and Recycling Collection Agreements.
Recommendation: Waive first reading and introduce Ordinance No. 22-2012. (Roll Call Vote); Adopt Resolution 119-2012.
Result of Recommended Action: Adoption of this Ordinance will repeal unnecessary Sacramento County Code provisions on solid waste from the City's Code, which were previously incorporated by reference, and will amend Rancho Cordova Municipal Code chapters 6.20 and 6.21 on solid waste and recycling to resolve conflicts between the Code and commercial franchise agreements for solid waste collection and reflect changes in State law concerning recycling. Adoption of this Resolution will give the Public Works Director the authority to negotiate and execute non-exclusive commercial solid waste and recycling collection agreements, and to grant the franchises.
Staff Report: Kathy Garcia, Public Works Department.
Advances Goals: 1,2, and 5.

16. PUBLIC HEARING ITEMS

- 16.1 **Subject:** City-Sponsored Zoning Code Amendment – Digital Freeway Signs – Applies Citywide.
Recommendation: Introduce and waive first reading of Ordinance No. 23-2012.
Result of Recommended Action: Approving this Zoning Code Amendment removes the requirement for an Operating Agreement for Applicant's pursuing entitlements for a Digital Freeway Sign. The amendment also establishes community messaging, an operation and maintenance plan, and an increased standard for removal of traditional billboards within the City when a Conditional Use Permit is considered, as standard requirements for installation of a Digital Freeway Sign. The Amendment would allow the City Council to consider a deviation from these standards in the form of an optional Operating Agreement when an Applicant desires to provide an equivalent community benefit in an alternative manner.
Staff Report: Jessica Jordan, Planning Department.
Advances Goals: 1, 2, and 6.
- 16.2 **Subject:** Safeway Fueling Center #1746 Conditional Use Permit and Minor Design Review; Project No. DD7653 – Located at 10605 Folsom Boulevard.
Recommendation: Adopt Resolution 120-2012.
Result of Recommended Action: Adoption of this resolution will allow construction of a new fueling station and convenience store to be operated by Safeway. The new development will remove an old vacant building off the Boulevard and upgrade the appearance of that portion of the Folsom Boulevard Specific Plan.
Staff Report: William Campbell, Planning Department.
Advances Goals: 1, 2 and 6.

17. REGULAR CALENDAR ITEMS

- 17.1 **Subject:** Resolution Electing to Withdraw from the Human Rights and Fair Housing Commission and Authorizing Staff to Fulfill any Current Financial Obligations to the Commission and Discussion of Draft Fair Housing and Tenant Landlord Mediation Program.
Recommendation: Adopt Resolution No. 116-2012 electing to withdraw from the Human Rights and Fair Housing Commission and authorizing staff to fulfill any current financial obligations to the Commission.
Result of Recommended Action: The City will withdraw from the Human Rights and Fair Housing Commission consistent with the process described in the JPA Agreement. Staff will continue to develop a program to Affirmatively Further Fair Housing as required to participate in the Federal Community Development Block Grant (CDBG) program.
Staff Report: Reed Flory and Jessica Hayes, Housing Services Division and Phil Nichols, Neighborhood Services Division.
Advances Goals: 1, 2, and 5.

18. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

19. CITY MANAGER'S REPORT

20. ADJOURNMENT

ADDITIONAL INFORMATION

UNLESS THE COUNCIL ADOPTS A MOTION TO EXTEND THE MEETING, ANY ITEM THAT IS NOT INITIATED BEFORE 11:00 PM WILL BE CONTINUED TO THE NEXT DAY AT 5:30 PM OR SCHEDULED ON THE NEXT REGULAR MEETING AGENDA OF THE COUNCIL.

Public documents related to items on the open session portion of this agenda, which are distributed to the City Council less than 72 hours prior to the meeting, shall be available for public inspection at the time the documents are distributed to the Council. Documents are available for inspection at the City Clerk's office located in Rancho Cordova City Hall.

The agenda items are accessible on the City's website at www.cityofranhocordova.org on Thursdays or Fridays prior to the Regular City Council Meeting.

CITYWIDE GOALS - (Adopted March 27, 2012)	
1.	Promote the Positive Image of Rancho Cordova
2.	Ensure a Safe, Inviting and Livable Community
3.	Empower Responsible Citizenship
4.	Establish Logical City Boundaries that Provide Regional Leadership and Address Financial Challenges
5.	Ensure the Availability of the Best Public Services in the Region while Practicing Sound Fiscal Management
6.	Drive Diverse Economic Opportunities

UPCOMING MEETINGS	
Monday and Tuesday December 24 -25, 2012	CHRISTMAS EVE AND CHRISTMAS DAY – CITY HALL CLOSED
Wednesday through Monday, December 26 - 31, 2012	WINTER BREAK – CITY HALL CLOSED
<i>Monday, January 7, 2013</i>	<i>Regular Meeting CANCELLED</i>
<i>Tuesday-Wednesday, January 8-9, 2013</i>	<i>Special Meeting – City Council and Staff Learning Retreat</i>
<i>Tuesday, January 15, 2013</i>	<i>City Council Special Meeting – Work Session</i>
<i>Monday, January 22, 2013</i>	<i>City Council Regular Meeting</i>
<i>Tuesday, January 29, 2013</i>	<i>City Council Special Meeting – Work Session</i>

If you have any technical questions related to the agenda items, please contact the appropriate department as follows:

DEPARTMENTAL GENERAL TELEPHONE NUMBERS	
Building and Safety Division	(916) 851-8760
City Attorney's Office	(916) 556-1531
City Clerk's Department	(916) 851-8720
City Manager's Office	(916) 851-8800
Communications Department	(916) 851-8791
Economic Development Department	(916) 851-8780
Finance Department	(916) 851-8730
Housing Department	(916) 851-8784
Human Resources Department	(916) 851-8740
IT Department	(916) 851-8700
Neighborhood Services – Animal Services	(916) 851-8770
Parks & Recreation (Cordova Recreation & Park District)	(916) 362-1841
Planning Department	(916) 851-8750
Public Works Department	(916) 851-8710
Rancho Cordova Police Department	(916) 875-9600
Redevelopment Department	(916) 851-8780
Sac Metro Fire District	(916) 859-4300

The Rancho Cordova City Council/Successor Agency to the CRA/RCFC will be videotaped in its entirety and will be cablecast without interruption on Metro Cable 14, the Government Affairs Channel on the Comcast and SureWest Cable Systems. Closed Captioning will be available on the playback cablecast. Tune to Metro Cable Channel 14, for playback times. A VHS copy is available for check out from any library branch, a DVD copy is available from the City Clerk's Department, and a webcast of this meeting will be available for viewing via video streaming from the City's website within 48 hours of adjournment of this meeting. The City does not control scheduling of this telecast and persons interested in watching the televised meeting should confirm this schedule with Metro Cable TV, Channel 14.

In compliance with the Americans with Disabilities Act, if you need a disability-related modification or accommodation, including auxiliary aids or services, to participate in this meeting, please contact the City Clerk's Office at (916) 851-8720 at least 48 hours prior to the meeting.

CERTIFICATION OF POSTING OF AGENDA

I, Mindy Cuppy, CMC, City Clerk for the City of Rancho Cordova, declare that the foregoing agenda for the Monday, December 17, 2012 Regular Meeting of the Rancho Cordova City Council/Successor Agency to the CRA/RCFC was posted and available for review on December 13, 2012 at City Hall of the City of Rancho Cordova, 2729 Prospect Park Drive, Rancho Cordova, California, 95670. The agenda is also available on the city website at www.cityofranhocordova.org.

Signed December 13, 2012 at Rancho Cordova, California.


Mindy Cuppy, CMC, City Clerk

BUSINESS WALK SERIES

A METRO PULSE PROGRAM



a METRO  CHAMBER production

RANCHO CORDOVA | OCTOBER 26, 2012

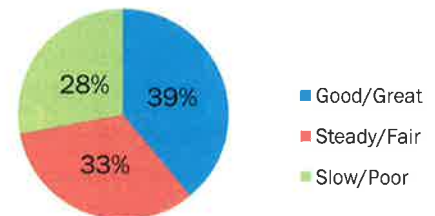
POST-EVENT REPORT

The 5th Annual Rancho Cordova Business Walk took place on October 26, 2012 – a partnership of the Sacramento Metro Chamber, City of Rancho Cordova, and Rancho Cordova Chamber of Commerce. The Business Walk Series is an ongoing economic development program that takes place throughout the six-county Sacramento region. The day of the walk, 46 volunteer business and civic leaders visited 110 businesses in Rancho Cordova, successfully interviewing 100 of them. The conversation focused on three basic questions: how is business, what do you like about doing business in Rancho Cordova, and what should be done to improve business in Rancho Cordova?

Question 1: How Is Business?

The vast majority of Rancho Cordova businesses reported that business was at least steady/fair. Of businesses reporting a **good/great** rating, some indicated an increase in customers and sales over the last year. Others reported that business is up sufficiently to warrant new hiring. Several, identifying their current business as being **steady/fair**, indicated that business is picking up. However, these responses continue to indicate fluctuating business levels and uncertainty over continued customer and sales increases. The continued impact of a difficult economy appears to be the primary culprit for businesses reporting a **slow/poor** rating. Though, a number of these companies correlated the loss of Raley's with their sluggish business performance. Within this group, there are businesses that are relatively new, establishing themselves within the past few years. However, there are also companies in the slow/poor category that have been in business 10 years or more.

How's business?

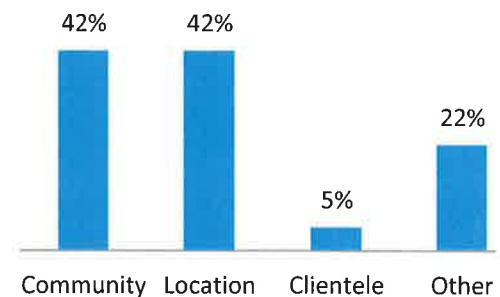


Question 2: What do you like about doing business in Rancho Cordova?

A significant number (42%) of owners/managers enjoy doing business in Rancho Cordova because of the **community**. Some like Rancho Cordova's aesthetics. Others find the friendliness of the fellow community members to be their favorite community attribute. Rancho Cordova's cleanliness and affordability also rated highly among businesses. It was not uncommon to hear that the business owner/manager had been in Rancho Cordova for several decades. The same percentage (42%) of those interviewed described the **location** as the best part of doing business in Rancho Cordova. For some, the location was related to geographic attributes of the City. For others, location had more to do with attributes of their specific business site within Rancho Cordova. Some businesses like that Rancho Cordova provides them with a central location and easy access to freeways. Others live in or near Rancho Cordova and enjoy locating their business close to home.

A few businesses said **clients** they serve is the best part of doing business in the area. Businesses provided several **other** reasons for liking Rancho Cordova including reasonable lease rates, local sporting events, and good city government.

What do you like about doing business in Rancho Cordova?



Question 3: What should be done to improve business?

The largest share of responses focused on a need for improvements in the **economy**.

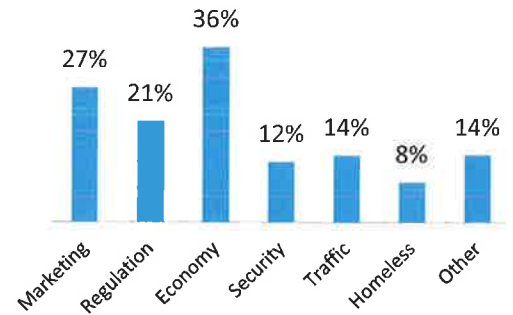
Businesses said there is a need to fill commercial vacancies in Rancho Cordova, and a desire to see more businesses in the area. Some expressed a desire to see an increase in a certain type of business, such as restaurants or manufacturing companies.

A large number of companies said more **marketing and visibility** opportunities would improve business conditions in Rancho Cordova. These responses focused largely on a need for advertising opportunities, signage as a means to boost visibility, and efforts to make connections that will grow their business.

Regulations were discussed frequently as well. For the most, responses in this category related to City regulations, such as signage and permitting requirements. Several companies had questions and voiced concerns about a self-inspection program launched by the Sacramento Metropolitan Fire District.

Traffic-related issues were on the minds of business owners/managers. These concerns generally focused on some aspect of road infrastructure that businesses felt were negatively impacting access to and/or visibility of their place of business. **Homeless** issues were also cited and, in a few cases, associated with concerns over safety and security in the area.

What should be done to improve business in Rancho Cordova?



RECENT ACTIVITIES

Fortune magazine named the City of Rancho Cordova as one of the best 25 small workplaces in the United States on its annual Best Small & Medium Workplaces list. Rancho Cordova is the first ever local government agency to appear on the list that recognizes companies with exceptional workplace cultures. This recognition is part of what make the City of Rancho Cordova the “center of it all”.

The phrase “center of it all” is a unique effort that aligns our community as part of the four-legged stool approach to serving the residents and our business community. The Rancho Cordova Chamber of Commerce, Cordova Community Council, Rancho Cordova Travel and Tourism and the City of Rancho Cordova are all working for the best interest of Rancho Cordova. This approach allows for a far more effective marketing plan and implementation efforts as we promote Rancho Cordova as the “center of it all”, a place to **prosper**, a place to **belong**, and a place to **play**.

A major employment sub-center in the Sacramento region with over 50,000 jobs, Rancho Cordova is now part of the Sacramento Regional Enterprise Zone, which provides substantial state income tax incentives to local businesses and is a powerful business attraction and retention tool. The Rancho Cordova Travel and Tourism Corporation was recently established as a non-profit agency focused on promoting local commerce and increasing hotel stays for the city’s 2,000 hotel rooms. The city’s economic development team actively pursues initiatives that promote a business-friendly environment and foster community growth. For more information, visit cityofranhocordova.org.

The Rancho Cordova Chamber of Commerce remains confident about the growth and prosperity of this remarkable city. Membership continues to grow as do programs designed to support this “Place to Prosper”. The chamber will celebrate 50 years of service to the business community in 2013 and plans are in place for an anniversary gala and many other events. To find out more and be a part of this dynamic business organization visit RanchoCordova.org.

2010-2012 AREA RESULTS:

The findings below are statistics for the past three Rancho Cordova business walks. For questions two and three, because respondents were able to provide more than one answer, the total may equal more than 100 percent.

How's Business?	2010	2011	2012
Good/Great	34%	44%	39%
Steady/Fair	39%	29%	33%
Slow/Poor	27%	27%	28%

What do you like?	2010	2011	2012
Community	24%	20%*	42%
Clients	N/A %	N/A	5%
Location	63%	74%	42%
Business Climate	12%	N/A	N/A
Affordability	N/A	8%	N/A
Other	19%	17%	22%

What don't you like?	2010	2011	2012
Marketing	16%	16%	27%
Regulation	17%	12%	21%
Economy	22%	14%	36%
Security	17%	26%	12%
Traffic	17%	17%	14%
Homeless	N/A	N/A	8%
Redevelopment/Development	N/A	16%	N/A
Nothing	15%	13%	N/A
Other	14%	12%	14%

Summary: The results over time indicate that the economy and businesses have improved since 2010 based upon the increase in companies stating their business was good/great. However, results for 2012 indicate that a downward trend may be presenting itself again. Overall, businesses enjoy doing business in Rancho Cordova because of the location and the community of which they are a part. The economy is of greater concern to businesses this year than it has been in the previous two. Desire for expanded marketing and visibility opportunities continue to rate highly among business needs, as do concerns over the regulatory environment.

*In the 2011 business walk report, the "community" category included responses related to clients.

The Sacramento Metro Chamber is the largest and oldest voice of business in the greater Sacramento area. Representing nearly 2,000 member businesses and business organizations in the six-county Sacramento region, the Metro Chamber serves as the region's leading proponent of regional cooperation and primary advocate on issues affecting business, strengthening the regional economy and quality of life. As a founding member of Partnership for Prosperity¹ and in its role as managing partner of Metro Pulse², the Metro Chamber executes the Business Walk Series in cooperation with its local chamber and public sector partners. The Metro Chamber has partnered with 18 other regional jurisdictions and economic development organizations to provide one-on-one support for county businesses and throughout the Sacramento metropolitan region. These organizations, through Metro Pulse, are meeting one-on-one with businesses throughout the six-county Sacramento region to identify and address individual business needs and ensure continued growth and economic prosperity. For additional information concerning Metro Pulse, visit metropulse.org.

¹ Partnership for Prosperity is the Sacramento region's economic development strategy, which focuses on developing people, place and business.

² Metro Pulse is a coalition of 19 public and private sector partners focused on ensuring that the Sacramento metropolitan region is the best place to do business in California.



Presented By:

Participating Businesses

- A & R Family Haircare Salon
- A.R.S. Marketing Group, Inc.
- Action Guns
- AMBASSADOR WOODWORKS, INC.
- APPLIANCE PARTS DEPOT
- ARC Western
- Aztec Solar Inc.
- B&B Tax and Consulting Service, Inc.
- Baja Limo
- BERGELECTRIC CORP
- Biaggio Tile & Stone
- Boot Barn
- Bouncetown
- BounceU
- BRADSHAW PACK & SHIP
- Brookside Restaurant & Bar
- Callen Pool Supply, Inc.
- Capital Dance Cneter
- CAPITAL FOOD & LIQUOR
- Capitol Door and Molding
- Carniceria Y Restaurant
- Chen's Marble & Granite
- Closet Creations
- Coloma T.V. Repair
- Consolidated Electrical Distributors, Inc. - Rancho
- Cook Engineering, Inc.
- Crossland Economy Studio
- Curves - Rancho Cordova
- Custom Home Accessories
- Custom Plus Distributing
- Deja Vu
- DEN-X DENTAL LAB
- DOLLAR TREE STORES INC #1205
- Easy Clean Systems
- Empire Furniture Home Decor & Gift
- ENGINEERED MONITORING SYSTEMS,
- Enterprise
- Fidelity National Title Company - Rancho Cordova
- First Command Financial Planning
- First Responder Emergency Medical Services, Inc.
- FIRST STOP SMOG
- FOLSOM CHEVRON
- Full Stop Market
- Gamboa's Body & Frame - Rancho
- Golden State Collision Centers
- Great Impressions Printing
- H&R BLOCK ENTERPRISES, INC
- Holiday Inn Rancho Cordova
- HOWARD'S DONUTS
- HYATT house
- Hydraulic Power Sales, Inc.
- Ichi Maki Japanese Restaurant
- JAMES'S BEAUTY SUPPLY INC
- JOLIE NAILS
- Kohl's - Rancho Cordova
- KS CLEANERS & PURE WATER
- Labor Ready
- LEO'S AUTO CENTER
- LICENSE INSTRUCTION SCHOOLS
- Light Bulbs Plus
- LINDA NAILS #2
- Load-N-Lock Storage
- Luigi Piciucco Ph. D
- Manufactured Home Mortgage
- Marriott
- McNeely-Yuill Corporation
- MERRY MAIDS #193
- Metroform
- MINUTEMAN PRESS
- Motion Control Engineering
- Mufflers USA
- Napa Auto Parts
- Northwestern Mutual
- Oakwood Worldwide - Corporate Housing
- P & A FOOD & LIQUOR
- Park Cabinet Distribution LLC
- PAVEL'S DELI & BAKERY
- Polarity
- Pro Spectra Contract Flooring
- QUICK FIT TIRES
- QUILTERS CORNER INC
- R U TAN
- Rancho Cordova Dental Group and Orthodontics
- RANCHO PRODUCE MARKET
- Rayco Electric
- Refrigeration Supplies Distributor
- Rent-A-Center - Rancho Cordova
- RMA Group
- RUSSIAN CHOCOLATE INC.
- Sacramento Electronic Supply
- Salvation Army - Rancho
- Sears Outlet
- Sherwin-Williams
- Simple Floors
- Sleep Train - Rancho Cordova
- SOAR (Sacramento Occupational Advancement Resources, Inc.)
- Stone Decor Gallery
- Suburban Propane
- Sutley Wertzner, Inc.
- TAIT Environmental Svc
- Tanner Masonry, Inc.
- Teen Challenge
- THE BEE MEDICAL SUPPLY
- The Local Bark
- Thermogeneses Corp.
- Tom Duffy Company Wholesale Flooring Products
- Valley Gaming
- VIP Fitness Gym
- Wayside Lumber
- Woodmack Products, Inc.



**CONCURRENT MEETING
CITY COUNCIL/SUCCESSOR AGENCY TO THE COMMUNITY REDEVELOPMENT
AGENCY (CRA)/RANCHO CORDOVA FINANCING CORPORATION (RCFC)**

City Hall
2729 Prospect Park Drive, Rancho Cordova

Monday, December 03, 2012

5:30 PM – Regular Meeting
David B. Roberts Council Chambers

MINUTES

1. REGULAR MEETING - CALL TO ORDER / ROLL CALL

Vice Mayor Budge called the regular meeting to order in the David B. Roberts Council Chambers at 5:44 PM.

Council Members Present: McGarvey, Skoglund, Budge, Sander (at 5:53).

Council Members Absent: None.

Staff Members Present: Gaebler, Lindgren, Cuppy, Hadley, Chinn, Ulm, Stricker, Campbell, Downton, Peterson, Haven, Richeal, Cook, Blair, Simpson, Gassaway, Holt, Mauch, Silva, Runner, Flory, Behrends, Junker, Arevalo.

2. METRO CABLE TV TELEVISION ANNOUNCEMENT

The City Clerk read the meetings recordings and playback schedules.

3. PLEDGE OF ALLEGIANCE

John Skoglund led the pledge.

4. INVOCATION

Pastor David McFarland from New Life Center of Rancho Cordova gave the invocation.

5. CERTIFICATION OF NOVEMBER 6, 2012 ELECTION

ACTION: Motion to approve by McGarvey second by Skoglund;
Carried by a 3:0 roll call vote. (Sander absent)

- 5.1 Certification of the Results of the November 6, 2012 General Municipal Election with Regard to Members of the City Council and One Measure.

Recommendation: Adopt Resolution No. 113-2012.

Result of Recommended Action: Adoption of the Resolution results in the City's compliance with California Elections Code Regulations 10262, 10263, and 10264, which, in part, state that the governing body shall declare the results of each election under its jurisdiction.

Staff Report: Mindy Cuppy, CMC, City Clerk's Department

6. PRESENTATIONS

- 6.1 Introduction of New City Employee Patrick Mauch by Neighborhood Services Manager, Kerry Simpson.
- 6.2 Presentation to Outgoing Council Member Ken Cooley.
- 6.3 Swearing-in and Seating of Re-elected and Newly Elected Council Members Terry, McGarvey and Sander.

7. CELEBRATORY BREAK

AT THIS POINT (6:18 PM) Council took a celebratory break in honor of Assembly Member Cooley and Council Members Terry, McGarvey and Sander. The full council resumed at 6:48 PM.

8. PUBLIC COMMENT

Mayor Sander opened the public comment period. The following individuals addressed the Council:

- Walt Myers regarding consent item number 11.1.
- Derald Langwell regarding consent item number 11.1.

Mayor Sander closed the public comment period.

9. COUNCIL REPORTS

Council reported on events since the last meeting.

10. CONSENT CALENDAR ITEMS - ROLL CALL VOTE

ACTION: Motion to approve by Budge second by Skoglund;
Carried by a 5:0 roll call vote.

- 10.1 **Subject:** Meeting Minutes of November 19, 2012 Regular and Special Meeting.



Recommendation: Adopt Minutes.

- 10.2 **Subject:** Electric Fence Zoning Code Amendment - Project No. DD7552
Recommendation: Waive the second reading and adopt Ordinance No. 18-2012.
Result of Recommended Action: Approval of the Zoning Code Amendment establishes a by-right or Administrative Use Permit requirement and development standards for the installation of electric fences within certain specified circumstances within the City limits.
Staff Report: Jessica Jordan, Planning Department
Advances Goals: 1 and 2.
- 10.3 **Subject:** Resolution Authorizing the Utilization of the State of California's Citizens Option for Public Safety Program Funds (COPS).
Recommendation: Adopt Resolution No. 112-2012 authorizing the expenditure plan for the utilization of funds available from the State's Supplemental Law Enforcement Fund (SLESF) which funds the State's "Citizen's Option for Public Safety" (COPS) program.
Result of Recommended Action: This action will result in the preservation of unused prior year grant funds in the amount of \$52,522, and allow for the spending of both the prior year carryover funds and the estimated current year allocation, \$106,280, in accordance with the Government Code 30061.
Staff Report: Donna Silva and Keith Meisner, Finance Department.
Advances Goals: 2 and 5.

11. CONSENT PUBLIC HEARING ITEMS - ROLL CALL VOTE

Mayor Sander opened the public comment period. There were no speakers. Mayor Sander closed the public comment period.

- 11.1 **Subject:** Ordinance Granting a Water Franchise to the Golden State Water Company.
Recommendation: Waive first reading and introduce Ordinance No. 20-2012 granting a water franchise to Golden State Water Company.
Result of Recommended Action: Passage of this ordinance will grant water franchise to the Golden State Water Company for the purpose of operating and maintaining water pipelines within the City's rights-of-way.
Staff Report: Cyrus Abhar, Public Works Director
Advances Goal: 5.

ACTION: Motion to approve by Budge second by Skoglund;
Carried by a 5:0 roll call vote.

12. PUBLIC HEARING ITEMS

Mayor Sander opened the public comment period. There were no speakers. Mayor Sander closed the public comment period.

- 12.1 **Subject:** Ordinance Amending Sections of Chapter 16.20, "Housing Code," of the Rancho Cordova Municipal Code Relating to Rental Housing Inspection Violation Fees; and Resolution Amending Rental Housing Inspection Fee Schedule.
Recommendation: Waive first reading and introduce Ordinance No. 19-2010. (Roll Call Vote); and adopt Resolution No. 111-2012.
Result of Recommended Action: Adoption of Ordinance No 19-2012 and Resolution



No. 111-2012 will amend portions of the Housing Code to allow rental property owners to pay lower fees if they quickly correct minor code violations discovered during an inspection; and amend the Municipal Code to allow fees to be set by resolution. Adoption of this Ordinance also amends the code to reflect recent court decisions regarding consent to enter a rental property and the authority to charge inspection fees.

Staff Report: Kerry Simpson, Neighborhood Services Manager

Advances Goals: 1, 2, and 3.

GROWING STRONG NEIGHBORHOODS

ACTION: Motion to approve by Terry second by McGarvey;
Carried by a 5:0 roll call vote.

13. REGULAR CALENDAR ITEMS

13.1 **Subject:** 2013 City Council Meeting Schedule.

Recommendation: Staff recommends Council approve its meeting schedule for 2013.

Result of Recommended Action: Action on this item will approve the 2013 meeting schedule for the members of the Rancho Cordova City Council.

Staff Report: Ted A. Gaebler, City Manager's Office and Mindy Cuppy, City Clerk's Office.

Advances Goal: 5.

ACTION: Motion to approve by Budge second by Skoglund;
Carried by a 5:0 vote.

13.2 **Subject:** Selection of 2013 Mayor and Vice Mayor.

Recommendation: That Council select its Mayor and Vice Mayor for 2013.

Result of Recommended Action: Council will appoint its leadership officers, per Resolution No. 5-2004. The ceremonial seating of the new Mayor and Vice Mayor will take place at the next Council Meeting on December 17, 2012.

Staff Report: Mindy Cuppy, CMC, City Clerk's Department.

Advances Goal: 5.

ACTION: Motion to nominate Linda Budge to serve as 2013 Mayor by Sander, second by Skoglund;
Carried by a 5:0 vote.

ACTION: Motion to nominate Dan Skoglund to serve as 2013 Vice Mayor by Sander, second by McGarvey;
Carried by a 5:0 vote.

14. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

None.

15. CITY MANAGER'S REPORT

Major Development Projects.

16. ADJOURNMENT

Council did not meet in closed session and Mayor Sander adjourned the regular meeting at 8:58 PM.

17. CLOSED SESSION - CALL TO ORDER/ROLL CALL

18. CLOSED SESSION

Conference with legal counsel, anticipated litigation (Government Code Section 54956.9 (b)), one (1) potential case.

19. OPEN SESSION - REPORT FROM CLOSED SESSION

20. ADJOURNMENT

Mayor Sander adjourned the regular meeting at 8:58 PM.

Mindy Cuppy, CMC, City Clerk

ORDINANCE NO. 20-2012

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA GRANTING TO THE GOLDEN STATE WATER COMPANY A DETERMINATE FRANCHISE TO CONSTRUCT, MAINTAIN AND USE PIPES AND APPURTENANCES, NECESSARY OR PROPER FOR TRANSMITTING WATER UNDER, ALONG, ACROSS OR UPON THE PUBLIC STREETS WITHIN THE CITY OF RANCHO CORDOVA

THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA DOES ORDAIN AS FOLLOWS:

Section 1. Definitions. Whenever in this ordinance the words or phrases defined in this section are used, they shall have the respective meanings assigned to them in the following definitions:

(a) "City" means the City of Rancho Cordova, a California municipal corporation, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

(b) "Construct, maintain and use" means to lay, construct, erect, install, operate, maintain, use, repair, modify or replace.

(c) "Day" means a calendar day.

(d) "Grantee" means the Golden State Water Company, a California Corporation, and its lawful successors or assigns.

(e) "Franchise" means the rights and privileges described in this ordinance.

(f) "Pipes and appurtenances" means pipe, pipelines, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, ditch, flume, appliance, attachment, appurtenance and any other property located or to be located in, upon, along, across, under or over the streets of the City, and used or useful in transmitting and distributing water; provided, however, that nothing in this franchise grants the right to use any of the foregoing facilities for any purpose other than the transmission or distribution of water. The term "facilities" may hereafter be used for convenience to refer to "pipes and appurtenances."

(g) "Public streets" means the public streets, ways, alleys and places as they may now or hereafter exist within the city limits of City, including State highways, now or hereafter established within City. "Public streets" includes a public right-of-way, whether or not formally included within City's public road system. "Public streets" does not include a public utility easement crossing private property, nor does "public streets" include any park, playground, school property or other municipal or public property not constituting a public right-of-way. "Public streets" does not include, and this franchise does not allow the use of, a public utility easement described in Government Code Section 50335 or successor legislation, the use of which is governed by such terms and conditions as agreed upon by the parties thereto.

(h) "Term" shall mean the initial term as defined in Section 5(a) and any renewal term, unless otherwise required by the context.

Section 2. Grant of Franchise. City hereby grants Grantee a non-exclusive and determinate franchise to construct, maintain and use pipes and appurtenances necessary or proper for the transmission and distribution of water under, along, across or upon the public streets within those areas of the City located within the Grantee's dedicated areas of service as set forth in the tariff map filed by Grantee with the California Public Utilities Commission (CPUC). Grantee shall provide City with notice of any filing with the CPUC for a change in service area located within the boundaries of the City and all tariff maps filed by Grantee with the CPUC reflecting the service area of Grantee within the City, unless waived in writing by the Public Works Director.

Section 3. Compliance with Local Laws.

(a) Grantee shall construct, maintain and use all pipes and appurtenances in a good and workmanlike manner and in compliance with all lawful federal, State and City laws, ordinances, resolutions, regulations, policies, rules, orders, plans and specifications in force at the time this franchise becomes effective or as may be amended or added from time to time during the term of this franchise.

(b) All zoning, uniform code, business license, fee, or other generally applicable ordinances now existing, or enacted by the City Council in the future, are, to the extent lawful, fully applicable to Grantee, and the Grantee agrees to fully comply with these existing and future generally applicable lawful ordinances. The Grantee agrees that the City requiring the Grantee to comply with future generally applicable lawful ordinances, will not result, in any circumstances, in a substantial impairment of the Grantee's rights under this franchise. If there is a conflict between this franchise and any generally applicable lawful ordinance, the generally applicable lawful ordinance will prevail. If the City requires the Grantee to comply with a future generally applicable lawful ordinance that the Grantee determines will materially increase the Grantee's operations costs, the Grantee may request that the City approve a longer franchise term.

(c) Upon constructing, maintaining or using any pipes and appurtenances, or any part thereof, Grantee shall expeditiously at its own cost and expense restore all public property disturbed or altered as a result of Grantee's actions to the condition that the public property was in prior to being disturbed or altered as reasonably determined by the City. As used in this section, "public property" means public streets, rights-of-way and improvements and includes, but is not limited to, all public improvements associated with the public streets that may be affected by Grantee's activities, such as landscaping, irrigation systems, street lights, street furniture, sidewalks and bus shelters. Grantee shall comply with City's terms and conditions concerning the location within the public streets of proposed facilities, except to the extent State or federal law or regulation preempts any such terms and conditions.

(d) Grantee's activities and each restoration of public property under this franchise shall be performed in a good and workmanlike manner, and in accordance with the lawful standard plans, specifications, orders, rules and regulations of City and each of its applicable departments, and subject to all lawful fees and exactions.

Section 4. Relocation. Grantee shall remove or relocate, without expense to City and within the time City reasonably specifies, any facilities installed, used and maintained under this franchise, if and when made necessary by any lawful change of grade, alignment

or width of any public street, way, alley, or place, including the construction of any subway or viaduct, by City.

Section 5. Term.

(a) The initial term of the franchise shall commence with the effective date of this franchise as certified under Section 21 and continue for a period of fifteen (15) years ("Initial Term"), subject to renewal and termination as provided under this section. The aggregate term of the franchise, including the Initial Term and the renewal term, shall not exceed thirty (30) years.

(b) At the conclusion of the Initial Term and upon application by Grantee, the term of the franchise may be renewed for an additional fifteen (15) year period ("Renewal Term"). An application for renewal shall be filed with the City Clerk at least six (6) months before the expiration date of the current term. Such application shall be subject to the approval of the City Council after a public hearing. Notice of the hearing shall be published at least fifteen (15) days prior to the hearing in a newspaper of general circulation within City or posted in the places designated for posting of official notices. The City Council shall approve the application unless it finds, on the basis of substantial evidence, that Grantee is then in material violation of this franchise. In approving the application, the City Council may modify the franchise by ordinance based upon the experience of City in administering the franchise during the preceding term and to take into account changes in relevant technology and utility industry regulatory developments and business practices. Any modification of the franchise shall be based upon substantial evidence concerning the need for such modification in the record considered by the City Council. Grantee shall reimburse City for all reasonable costs, staff time, legal and consulting fees incurred by City, in connection with processing the application, up to a maximum of \$5,000. Such payment shall be made within thirty (30) days after City shall have completed proceedings on the application and furnished Grantee with a written statement of such expenses. A renewal, including any modifications to the franchise ordinance, shall not be effective, unless Grantee accepts such renewal pursuant to Public Utilities Code Section 6235.

(c) During the term of the franchise, the franchise shall remain in full force and effect unless: (1) Grantee voluntarily surrenders or abandons the franchise, with the consent of the applicable State or federal regulatory agency; (2) the State or some municipal or public corporation purchases by voluntary agreement or condemns and takes under the power of eminent domain, all property actually used and useful in the exercise of the franchise and situate within the territorial limits of the State, municipal or public corporation purchasing or condemning such property, or (3) the franchise is forfeited for noncompliance with its terms by Grantee.

Section 6. Franchise Payment. Grantee shall pay the franchise payments set forth in this section.

(a) During the term of this franchise, Grantee shall pay City two percent (2%) of Grantee's gross annual receipts arising from the use, operation or possession of the franchise, except that this payment shall be not less than one percent (1%) of Grantee's gross annual receipts derived from the sale within City limits of the utility service for which the franchise is awarded.

(b) Gross annual receipts shall include Grantee's receipts from the transmission

and distribution of water, and from the sale of any service or use of facilities, which involves Grantee's use, operation or possession of the franchise.

(c) In the event the legislature amends the Franchise Act of 1937 or enacts any other state law which increases the franchise payment to general law cities to a level greater than that provided in Section 6(a)-(b), then the City shall have the option of prospectively employing the new legislative formula, which shall apply for the remaining term of this Franchise. If the City exercises this option, the legislative formula shall be prospectively applied hereto on the later of (i) the effective date of the legislation, or (ii) January 1 of the calendar year in which the City exercised this option.

(d) The franchise payment under this section constitutes payment for the privilege of using public streets, and is not in derogation of any other lawful fee or exaction. Nothing in this ordinance shall limit or otherwise affect any ability City may have to require franchisees making use of public streets to pay for and obtain encroachment permit fees and pay trench cut fees, as applicable. In no event may any such fees or exactions charged by the City in connection with obtaining any such permit or trench cut fees exceed the reasonable costs to the City in processing the permit application, or otherwise be unreasonable or discriminatory.

Section 7. Payment; Audit.

(a) Within three (3) months after the expiration of each calendar year, or fractional calendar year, following the effective date of this franchise as certified under Section 21, Grantee shall file with City's Finance Director or other official designated by City a verified statement under penalty of perjury showing in detail the total gross receipts of Grantee during the preceding calendar year, or fractional calendar year. Grantee's statement shall include such other data or information as City may need to calculate or determine the amounts which Grantee is obligated to pay City pursuant to the provisions of Section 6.

(b) Within fifteen (15) days after filing the statement required by Section 7(a), Grantee shall pay to City, in lawful money of the United States, the amount required by Section 6 for such calendar year or fractional calendar year.

(c) Annually, at Grantee's expense, the City shall have the right to audit the books and records of Grantee relating to the calculation of the franchise fee upon reasonable notice during normal business hours solely for the purpose of verifying the calculation of the franchise fee. City shall, to the extent permitted by applicable law, maintain the confidentiality of all information provided by Grantee to City in connection with such audit that Grantee has informed City is confidential. Nothing herein shall be construed to require Grantee to make available information which constitutes private or confidential information pertaining to specific customers of Grantee, without the prior written consent of such customers. All books and records of Grantee relating to the calculation of the franchise fee for any calendar year shall be maintained by Grantee for a period of at least four (4) years following the delivery of the certified statement for such year.

(d) Any neglect, omission or refusal by Grantee to file the verified statement, or to remit its payment as specified in this section and in the amount set forth in Section 6 shall be grounds for declaration of a forfeiture of this franchise and of all rights of Grantee hereunder, consistent with Public Utilities Code Section 6291.

Section 8. Authority. This franchise is granted under the Franchise Act of 1937.

Section 9. Indemnity; Liability.

(a) Grantee shall indemnify, defend and hold harmless City, its officers and employees from all liability for damages proximately resulting from any operations under the franchise. In addition, Grantee shall be liable to City for all damages proximately resulting from the failure of Grantee well and faithfully to observe and perform any lawful provision of the franchise and any provision of any applicable law under which this franchise is granted.

(b) In addition to the provisions of Section 9(a), Grantee shall specifically indemnify, defend and hold harmless City, its officers and employees from any claim, suit or action arising from the presence of any hazardous materials in a public street and proximately resulting from Grantee's operations under the franchise. As used in this section, 'hazardous materials' means any hazardous substances, materials or wastes (1) defined or listed as "hazardous substances," "toxic substances" or similarly identified under any provision of California law; (2) designated as "hazardous substances" under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Sections 9601, *et seq.*), the Federal Hazardous Materials Transportation Law (49 U.S.C. Sections 5101, *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. Sections 6901, *et seq.*), or the Toxic Substance Control Act of 1976 (15 U.S.C. Sections 2601, *et seq.*); (3) defined as "toxic pollutants" under the Clean Water Act (33 U.S.C. Sections 1251, *et seq.*); (4) designated as "hazardous air pollutants" under the Clean Air Act (42 U.S.C. Sections 7401, *et seq.*); or (5) defined, designated or listed under any State or federal legislation or regulations adopted or amended during the term hereof. However, nothing in this section shall be interpreted in a way that would preclude Grantee from asserting defenses liability claims afforded public utilities regulated by the California Public Utilities Commission under California law (including court interpretations of California laws, such as *Hartwell Corp. v Superior Court* (2002) 27 Cal. 4th 256).

Section 10. Payment of Cost of Repairs. Grantee shall pay to City on demand the cost incurred by City for all repairs to public property made necessary by any of Grantee's operations under this franchise.

Section 11. Performance Bond or Letter of Credit.

(a) Grantee shall file with the City Clerk a corporate surety bond running to City and approved by the City Council, in a penal sum of \$15,000 (fifteen thousand dollars), which sum was set forth in the resolution of intention to grant this franchise. The bond shall be conditioned that Grantee shall well and truly observe, fulfill and perform each lawful term and condition of the franchise, and that in case of any material breach of condition of the bond the amount of the penal sum therein shall be recoverable. Grantee shall file such bond within five (5) days after the effective date of this ordinance. If the bond is not so filed, or is not approved by the City Council, the franchise may be refused or forfeited and any money paid to City in connection therewith shall be retained by City.

(b) Grantee shall maintain the bond in full force and effect throughout the Term of this franchise, at Grantee's sole expense. The bond shall be issued by an admitted surety insurer and comply with the requirements of the Bond and Undertaking Law, codified in Code of Civil Procedure Sections 995.010 *et seq.* This franchise shall be considered a "license or permit" within the meaning of the Bond and Undertaking Law, solely for purposes of application of such law to the bonding requirements of this section.

(c) Grantee may at its sole election provide an irrevocable standby letter of credit, in a form acceptable to the City Attorney, securing all or a portion of the amount otherwise required to be secured by the performance bond. The letter of credit shall be issued by an issuing bank with offices in California, or shall authorize an advising bank with offices in California to pay the beneficiary thereunder. The letter of credit shall authorize City to draw upon its proceeds in the event that Grantee fails to well and truly observe, fulfill and perform each lawful term and condition of the franchise, and that in case of any material breach of the franchise City may draw against the letter of credit up to the total amount set forth therein. If Grantee determines to file a letter of credit, Grantee shall file such letter of credit within five (5) days after the effective date of this ordinance.

Section 12. Publication Expenses. Grantee shall pay City a sum of money sufficient to reimburse City for all publication expenses incurred by it in connection with the granting of this franchise. Such payment shall be made within thirty (30) days after City shall have furnished Grantee with a written statement of such expenses. City shall furnish such written statement within thirty (30) days after this ordinance becomes effective.

Section 13. Other City Expenses. Grantee shall pay City a sum of money sufficient to reimburse City for all City staff time, legal and consulting fees reasonably incurred by City, in connection with the review and granting of this franchise, up to a maximum of \$5,000. Such payment shall be made within thirty (30) days after City shall have furnished Grantee with a written statement of such expenses. City shall furnish such written statement within thirty (30) days after this ordinance becomes effective.

Section 14. Insurance. During the term of this franchise, Grantee shall obtain and maintain at its sole cost and expense the insurance coverage required by this section.

(a) Grantee shall obtain and maintain commercial general liability insurance coverage for an aggregate annual amount of three million dollars (\$3,000,000), including bodily injury, personal injury and property damage or its equivalent in coverage, upon approval by the City. Such insurance coverage shall include, without limitation: (1) contractual liability coverage adequate to meet Grantee's indemnification obligations under Section 9; and (2) a cross-liability clause. Additionally, the insurance coverage shall contain the following endorsements as a part of each policy: (1) City is added as an additional insured for Grantee's operations under the franchise; and (2) the insurance shall cover the negligent acts of Grantee and the negligent acts of its employees, agents and subcontractors in the performance of work under the franchise.

(b) The insurance coverage required by this section may be satisfied by any combination of specific liability and excess liability policies, or by a self-insurance program reasonably satisfactory to City.

(c) The insurance coverage shall be primary and no insurance held by City shall be called to contribute to a loss under this coverage.

(d) Grantee shall submit proof of insurance to the City Clerk as set forth in Section 21, and shall thereafter file additional such proof annually.

Section 15. Police Power. Nothing in this franchise shall limit or otherwise affect the police power of City, as such authority may affect Grantee.

Section 16. Acquisition of Grantee's Property. The franchise granted hereunder in no way impairs or affects the right of City to acquire the property of Grantee by purchase or condemnation, and nothing in this ordinance shall be constructed to contract away, modify or abridge either for a term or in perpetuity City's right of eminent domain in respect to any public utility.

Section 17. Valuation of Franchise. This franchise shall never be given any value before any court or other public authority in any proceeding of any character in excess of the cost to Grantee of the necessary publication under Section 12 and any other sum paid by Grantee to City under Section 13 at the time of acquisition.

Section 18. Transfer of Franchise. The Grantee shall file with the City Public Works Department within thirty (30) days after any sale, transfer, assignment or lease of the franchise or any part hereto, or any of the rights or privileges granted hereby, written evidence of the transaction certified by the Grantee or its duly authorized officers.

Section 19. Resolution, Notice of Hearing and Protests. On November 5, 2012 the City Council adopted Resolution No. 105-2012 stating its intent to grant this franchise. Notice of hearing was given in the manner required by law. The City Council has held a duly noticed public hearing on its intention to grant this franchise. The City Council has heard any and all protests, and hereby determines such protests to be insufficient, overruled or denied.

Section 20. Construction. Headings in this ordinance are for convenience only, and shall have no bearing on interpreting the provisions hereof. If any provision of this ordinance is held by a court to be void or unenforceable, the same shall in no way affect any other provision of this ordinance, the application of any such provision in another circumstance, or the validity or enforceability of this ordinance as a whole. In the event any provision of this ordinance is held by a court to be void or unenforceable, City shall have the opportunity to amend this ordinance in a manner consistent with the judgment with the consent of Grantee or to negotiate a new franchise with Grantee.

Section 21. Franchise Effective Date. The franchise granted hereby shall not become effective until each of the following conditions is satisfied: (1) Grantee files written acceptance thereof with the City Clerk, which shall occur no later than one hundred and twenty (120) days after the effective date of this ordinance or this ordinance shall be of no further force or effect. (2) Grantee pays all sums owed to City under Sections 12 and 13. (3) Grantee files with the City Clerk either a bond as provided for in Section 11(a) or a letter of credit as provided in Section 11(c), and proof of insurance as required by Section 14. Upon receipt of the required documentation, the City Clerk shall certify the effective date of the franchise and notify Grantee thereof. Upon becoming effective, the water franchise granted hereunder shall supersede any previous water franchise issued to Grantee for service areas within the City of Rancho Cordova.

Section 22. Enforcement.

(a) If Grantee fails, neglects or refuses to comply with any of the provisions or conditions prescribed in this ordinance in any material respect, and does not within ten (10) days after receipt of a written demand for compliance begin the work of compliance, or after such beginning does not prosecute the work with due diligence to completion, City through

its City Council may declare the franchise forfeited, or assess damages as provided in this section for unexcused violations of the franchise.

(b) To implement enforcement under this section, City shall proceed as follows.

1. Notice of demand for compliance shall be in writing signed by the City Manager or designee and delivered by personal delivery or certified mail to that person identified in Section 26. The notice shall demand correction within a reasonable time. Such time shall not be less than ten (10) days after receipt of the notice. If Grantee is shown to have violated the franchise, or to have failed to correct the violation within the time prescribed, or if Grantee fails to commence corrective action within the time prescribed and diligently remedy such violation thereafter, or if the violation is not correctable, then City shall give Grantee written notice of not less than ten (10) days of a public hearing to be held before the City Council. City shall also give public notice of the hearing. The notice shall specify the alleged violations.

2. At the public hearing, the Council shall hear and consider all relevant evidence, and thereafter render written findings and its written decision. The hearing shall provide Grantee with the full opportunity to participate and present evidence.

3. If the Council finds that no material violation exists, or that Grantee has corrected the violation, or has diligently commenced correction of such violation after notice thereof from City and is diligently proceeding to fully remedy such violation, the proceedings shall terminate and no penalty or other sanction shall be imposed. In determining whether a violation is material, City shall take into consideration the reliability of the evidence of the violation, the nature of the violation and the damage (if any) caused to City thereby, whether the violation was chronic, and any aggravating or mitigating circumstances and such other matters as City may deem appropriate. In the event a proceeding is terminated, and City subsequently finds that the violation has not been corrected, City may, without prejudice, reinstate the proceeding.

4. If the Council finds that a material violation exists and that Grantee has not corrected the same in a satisfactory manner or has not diligently commenced correction of such violation, the Council may declare the franchise forfeited; or require payment of a dollar amount of compensatory damages resulting from Grantee's material violation; or declare the franchise forfeited and require payment of such compensatory damages. If Grantee fails to pay any sum due under this section within ten (10) days after invoice, City may require payment under the performance bond or letter of credit provided for in Section 11.

5. If the Council finds that a material violation exists, Grantee shall have the right to seek review of the Council's decision in the Superior Court of the State of California. The Council's decision shall not be stayed pending such review, absent a contrary order of the Court.

6. The remedies set forth in this section are cumulative, and are in addition to all other rights and remedies, including injunctive relief, available to City.

Section 23. Jurisdiction and Venue. Any dispute that arises under or relates to this franchise shall be resolved in the Superior Court of the State of California, and venue shall

be proper in the county in which City is located. In any such litigation, Grantee and City shall each be responsible for its respective attorneys' fees and costs.

Section 24. Notices. All notices, demands or statements required by this franchise to Grantee shall be in writing and delivered by hand or certified mail addressed to:

District Manager
Golden State Water Company
3035 Park Prospect, Suite 60
Rancho Cordova, CA 95670

with a copy to:

Senior Vice President, Chief Financial Officer, Corporate Secretary and Treasurer
Golden State Water Company
630 East Foothill Blvd.
San Dimas, CA 91773

All notices required by this franchise to City shall be in writing and delivered by hand or certified mail addressed to the City Clerk. All notices shall be deemed given on the date of delivery by hand, or three days after deposit in the mail, postage prepaid.

Section 25. Effective Date and Publication. Within fifteen (15) days from and after adoption, this Ordinance shall be published once in the Grapevine Independent, a newspaper of general circulation printed and published in Sacramento County and circulated in the City of Rancho Cordova, in accordance with California Government Code Section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its adoption.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the _____ day of _____, 2012 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

David M. Sander, Mayor

ATTEST:

Mindy Cuppy, CMC, City Clerk

CITY OF RANCHO CORDOVA

ORDINANCE NO. 19-2012

AN ORDINANCE OF THE CITY COUNCIL AMENDING CHAPTER 16.20 TITLE 16 OF THE MUNICIPAL CODE, TITLED “HOUSING CODE,” REGARDING FEES LEVIED AGAINST RENTAL PROPERTY OWNERS FOR REINSPECTIONS PERTAINING TO CODE VIOLATIONS AND REGARDING PERIODIC INSPECTIONS PROCEDURE

RECITALS

Whereas, Title 16, Chapter 16.20 of the Rancho Cordova Municipal Code, entitled “Housing Code,” sets forth policies and regulations to promote minimum standards for safe, healthy rental housing conditions within the City to enhance the quality of life for all residents; and

Whereas, substandard and unsafe residential rental dwellings within Rancho Cordova threaten the health, safety, and welfare of residents of such dwellings; and

Whereas, substandard and unsafe residential rental dwellings have a negative effect on the surrounding community because they are a blight and often are associated with or encourage unlawful activity; and

Whereas, Rancho Cordova code enforcement staff has observed, in performing their duties, that generally the most egregious violations of health, safety, and building codes occur in rental housing units; and

Whereas, performing annual inspections of all residential dwellings within Rancho Cordova would be overly burdensome on City staff and homeowners; and

Whereas, the most efficient and effective method of detecting unhealthy, dangerous, substandard, and unsanitary housing conditions is to routinely inspect rental housing units in a fair manner while observing the occupants’ right to privacy; and

Whereas, the California Health and Safety Code, Sections 17964, and 17970-17972 grant cities the authority to inspect rental housing dwellings; and

Whereas, City staff has identified the following necessary amendments to the Housing Code to ensure compliance and a fair process which will promote public health, safety, and welfare.

THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA DOES ORDAIN AS FOLLOWS:

Section 1. Amendment of Code. Section 16.20.015(B), entitled “Findings,” is hereby amended to read as follows:

B. Complaint-initiated enforcement actions combined with routine residential rental property inspections are necessary to provide the essential level of abatement of substandard housing conditions within Rancho Cordova to promote public health, safety, and welfare. City staff has

observed, in performing their duties, that generally the most egregious violations of health, safety, and building codes occur in rental housing units and therefore it is most efficient and effective to require periodic inspections of residential rental units rather than all housing units in the city.

Section 2. Amendment of Code. Section 16.20.221, entitled “Fees,” shall be added to the Rancho Cordova Municipal Code and read as follows:

16.20.221 Fees.

Unless a fee amount is specifically provided within this title, the City Council shall from time to time establish fees for services provided under this title by resolution, and where appropriate grant the City Manager the authority to review and adjust such fees when necessary to cover the cost of enforcement of this chapter.

Section 3. Amendment of Code. The title portion of Article XI, titled “Rental Housing Enforcement Fees,” shall be amended to read as follows:

Article XI. Rental Housing Enforcement Fees*

*The following sections constitute the categories of fees payable to the director by the owner of a building or residential rental unit subject to the Rental Housing Inspection Program within Article XII of this chapter. Such fees shall be set by resolution of the City Council and may be adjusted periodically by the City Manager to cover the cost of the services provided under this chapter.

Section 4. Amendment of Code. Section 16.20.1100 of the Rancho Cordova Municipal Code entitled, “Reinspection Fee,” is hereby amended to read as follows:

A. Following issuance of a notice and order (pursuant to RCMC 16.20.400) for a violation of the provisions of this chapter, upon the first reinspection of a dwelling to determine whether corrective action has been satisfactorily completed, and upon a determination that corrective action has been successfully completed by the time of such reinspection, there shall be no fee levied against the owner(s). There shall be no reinspection fee charged for an inspection caused by any complaint if no violation is discovered.

B. Following issuance of a notice and order (pursuant to RCMC 16.20.400) for a violation of the provisions of this chapter, upon the first reinspection of a dwelling to determine whether corrective action has been satisfactorily completed, and upon a determination that corrective action has not been successfully completed by the time of such reinspection, there may be a fee levied against the owner(s) in the amount set by resolution of the City Council.

C. Upon all subsequent reinspections, fees shall be levied against dwelling unit owners for previously noticed violations which have not been corrected by the time of such subsequent reinspections. Such fees shall be set by resolution of the City Council.

Section 5. Repeal Code. Section 16.20.1105 of the Rancho Cordova Municipal Code entitled, “Notice and Order Fee,” is hereby repealed.

Section 6. Amendment of Code. Section 16.20.1115 of the Rancho Cordova Municipal Code entitled, “Building permit surcharge,” is hereby amended to read as follows:

Where a building permit is required under the building code to complete work required by a notice and order issued under this chapter, there shall be imposed in addition to the building permit fee a building permit surcharge in the amount set by resolution of the City Council.

Section 7. Amendment of Code. Section 16.20.1120 of the Rancho Cordova Municipal Code entitled, "Hourly rate," is hereby amended to read as follows:

Where the director finds that additional costs of enforcement are not otherwise recovered by the fees levied by this chapter in association with a dwelling found to constitute a violation, the additional costs of enforcement shall be levied at the hourly rate to be set by resolution of the City Council, rounded to the nearest hour for each city official involved. Such hourly rate may also be applied to fees under RCMC 16.20.1100, where there is more than one uncorrected violation found.

Section 8. Amendment of Code. Section 16.20.1130 of the Rancho Cordova Municipal Code entitled, "Small claims collection fee," is hereby amended to read as follows:

For any amounts due and unpaid, and which are referred to the finance department for collection under this chapter, a fee set by resolution of the City Council shall be levied to cover costs of small claims court filing and administration.

Section 9. Amendment of Code. Section 16.20.1135 of the Rancho Cordova Municipal Code entitled, "Appeal fee," is hereby amended to read as follows:

The fee for all appeals taken under this chapter shall be set by resolution of the City Council.

Section 10. Repeal Code. Section 16.20.1150 of the Rancho Cordova Municipal Code entitled, "Closing fee," is hereby repealed.

Section 11. Amendment of Code. Section 16.20.1200(A) of the Rancho Cordova Municipal Code entitled, "'Periodic Inspections," is hereby amended to read as follows:

A. The director and his or her designees may periodically inspect residential rental property in the city. Entry for inspection shall be as the result of consent from the owner or occupant, or as the result of a warrant, pursuant to RCMC 16.20.1205.

Section 12. Amendment of Code. Section 16.20.1205 of the Rancho Cordova Municipal Code entitled, "Notice of inspections – Inspection procedure," is hereby amended to read as follows:

A. A letter of intent to inspect a residential rental property shall be mailed to the rental owner or his or her designee stating the date and time of inspection. Additionally, a notice will be posted on the property by the city. Such notification shall give a minimum of 14 days' notice and include a description of areas that will be inspected. The property may be inspected at an earlier date than noticed, upon the consent of the rental owner or his or her designee and contingent upon consent of any legal occupant or tenant.

B. Owners shall provide access to all required areas of the rental property for inspection within the time period specified in the notice of inspection. If the rental unit is legally occupied by a tenant or other occupant, the owner shall notify the tenant or occupant and request that the tenant or occupant allow entry into the unit by the city for the inspection. It shall be the

responsibility of the owner to notify the individual tenants of the inspection and make every good-faith effort to facilitate access to the property to be inspected.

C. In the event the owner, his or her designee, or tenant or occupant in possession of the property to be inspected refuses access to the property, the inspector shall have recourse to every remedy provided by law to secure lawful entry and inspect the premises, including but not limited to securing an inspection warrant pursuant to California Code of Civil Procedure Sections 1822.50 through 1822.57. The inspector shall provide notice that a warrant has been issued to both the owner/operator and the tenant or occupant at least twenty-four hours before the warrant is executed, unless the judge finds that immediate execution is reasonably necessary under the circumstances shown.

D. Notwithstanding the foregoing, if the inspector has reasonable cause to believe that the residential rental dwelling unit is so hazardous, unsafe or dangerous as to require immediate inspection to safeguard the public health or safety, the inspector shall have the right to immediately enter and inspect the premises and may use any reasonable means required to effect the entry and make an inspection.

E. Should an inspection need to be canceled or rescheduled, the rental owner or his or her designee shall be notified at least 24 hours prior to the scheduled inspection date. It shall be the responsibility of the rental owner to notify any tenants or occupants of a cancellation.

F. Formal Notice and Order. A formal report of the inspection results shall be mailed to the rental owner or his or her designee within 10 days of the completion of an inspection. The formal report shall include the results of the inspection. If violations are present, the director or his or her designee shall also mail and post a formal notice and order, pursuant to RCMC 16.20.400, indicating the violations, proper remedy for violations, the scheduled reinspection date and time, and any reinspection fees and costs that have been assessed.

G. Report of inspection. Rental owners shall provide the formal report of the inspection results specified in subsection (F) of this section to tenants or occupants upon the request of tenants or occupants.

H. New violations. Violations that were not noted on the initial inspection report but are discovered during the reinspection due to subsequent damage or deterioration shall be subject to correction.

Section 13. Severability

If any provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid or unenforceable.

Section 14. Effective Date

Within fifteen (15) days after adoption, a Summary of this Ordinance shall be published once in the Grapevine Independent or the Sacramento Bee, a newspaper of general circulation printed

and published in Sacramento County and circulated in the City of Rancho Cordova, in accordance with Government Code section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its adoption.

ADOPTED, THIS __th day of _____, 2012, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Linda Budge, Mayor

ATTEST:

Mindy Cuppy, CMC, City Clerk

MEMORANDUM



DATE: December 17, 2012

TO: Honorable Mayor and Council Members

FROM: Reed Flory, Housing Services Administrator
Jessica Hayes, Housing and Community Development Specialist
Dana Grossi, Housing Services Assistant

SUBJECT: A RESOLUTION AUTHORIZING APPROVAL OF CONTRACT 103-2012, WHICH ALLOWS THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH WILLDAN ENGINEERING FOR THE PROVISION OF LOAN MANAGEMENT SERVICES NEEDED FOR THE CALHOME OWNER-OCCUPIED RESIDENTIAL REHABILITATION PROGRAM

RECOMMENDATION

Adopt Resolution No 117-2012, approving contract 103-2012 for the not to exceed amount of \$144,000.

RESULT OF RECOMMENDED ACTION

Adoption of Resolution No. 117-2012 will approve contract 103-2012 with Willdan Engineering, who will provide various loan intake, loan management, and construction oversight services for the Owner-Occupied Residential Rehabilitation Loan Program under the CalHOME grant funded by the California Department of Housing and Community Development.

ADVANCES GOALS: 1, 2, and 3.

BACKGROUND

The Owner-Occupied Residential Rehabilitation Program is designed to improve the City's aging single family detached housing stock by encouraging low- and moderate-income homeowners to rehabilitate their homes, eliminate health and safety hazards, consider energy conservation measures, and bring homes into compliance with the current building codes.

The City has a large stock of aging homes that are in serious need of health and safety repairs and improvements. The effects of these aging homes frequently results in visually dilapidated neighborhoods that have difficulty in attracting new investment and non-rental homeowners. Additionally, increased amounts of City resources are spent on enforcing health and safety code violations, resources that could otherwise be spent elsewhere.

As an effort towards furthering the City's Growing Strong Neighborhoods initiative, the CalHOME REHAB program's long-term goals include the following:

- Reduce the number of substandard housing units within the City;
- Extend the useful life of affordable units;
- Maintain the existing affordable housing stock;
- Reduce lead-based paint hazards for children under 6 years of age;
- Improve quality of life and independence for persons with special needs, including the elderly and the disabled
- Support the continued rehabilitation of affordable housing using income from loan repayments; and
- Service loans and administer the program in the most responsive cost-efficient manner possible.

If Resolution No. xx-2012 is adopted, the City Manager will enter into a contract with Willdan Engineering (Contract 103-2012) to provide the necessary loan management services for the CalHOME REHAB program, to include the following program administration and implementation tasks: 1) application processing and loan packaging; 2) construction management; and 3) program management, marketing, and reporting. The contract, not to exceed \$144,000, will cover three program years.

ATTACHMENT

Resolution 117-2012 including Exhibit A: Contract 103-2012.

CITY OF RANCHO CORDOVA

RESOLUTION NO. 117-2012

A RESOLUTION AUTHORIZING APPROVAL OF CONTRACT 103-1012, WHICH ALLOWS THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH WILLDAN ENGINEERING FOR THE PROVISION OF LOAN MANAGEMENT SERVICES NEEDED FOR THE CALHOME OWNER-OCCUPIED RESIDENTIAL REHABILITATION PROGRAM

WHEREAS, the City of Rancho Cordova would like to enter into a professional services agreement with Willdan Engineering to provide loan management services for the CalHOME REHAB program funded by the California Department of Housing and Community Development; and

WHEREAS, execution of a professional services agreement with Willdan Engineering will further the City's Growing Strong Neighborhoods efforts through home rehabilitation, elimination of health and safety hazards, energy conservation measures, and bringing homes into compliance with current building codes; and

WHEREAS, the services will be contracted for in an amount not to exceed \$144,000.00; and

WHEREAS, those services will exceed the maximum amount the City Manager has the authorization to approve; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA THAT: The Council authorizes the City Manager to enter into a contract with Willdan Engineering (**Exhibit A**) in a form approved by the City.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the _____ day of _____, 2012 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Linda Budge, Mayor

The undersigned City Clerk of the applicant does hereby attest and certify that the foregoing is a true and full copy of a resolution of the governing board of the applicant passed and adopted at a duly convened meeting on the date set forth above, and said resolution has not been altered, amended, or repealed.

ATTEST:

Mindy Cuppy, CMC, City Clerk
1864184.1

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF RANCHO CORDOVA AND
WILLDAN ENGINEERING FOR
CALHOME FUNDED REHAB-O PROGRAM MANGEMENT**

THIS AGREEMENT for professional services is made by and between the City of Rancho Cordova, a California municipal corporation ("City"), and Willdan Engineering, a California corporation ("Professional"), as of July 1, 2012.

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Professional shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on June 30, 2015, the date of completion specified in Exhibit A. Professional shall complete the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Professional to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Professional shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Professional is engaged in the geographical area in which Professional practices its profession. Professional shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Professional's profession.
- 1.3 **Assignment of Personnel.** Professional shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Professional shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Professional shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.2 above and to satisfy Professional's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Professional a sum not to exceed \$129,600.00, notwithstanding any contrary indications that may be contained in Professional's proposal, for services to be performed under this Agreement. In the event of a conflict between this Agreement and Professional's proposal, regarding the amount of compensation, the Agreement shall prevail. City shall pay Professional for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Professional for services

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rendered pursuant to this Agreement. Professional shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Professional shall not bill City for duplicate services performed by more than one person.

Professional and City acknowledge and agree that compensation paid by City to Professional under this Agreement is based upon Professional's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Professional. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Professional and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Professional shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Professional and each employee, agent, and subcontractor of Professional performing services hereunder, as well as a separate notice when the total number of hours of work by Professional and any individual employee, agent, or subcontractor of Professional reaches or exceeds 1,694 hours, which shall include an estimate of the time necessary to complete the work described in Exhibit A;
- The Professional's signature.

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Professional.

2.3 Final Payment. ~~City shall pay the last 10% of the total sum due pursuant to this Agreement within sixty (60) days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.~~

2.4 Total Payment. City shall pay for the services to be rendered by Professional pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever

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incurred by Professional in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Professional submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

- 2.5 Hourly Fees.** Fees for work performed by Professional on an hourly basis shall not exceed the amounts shown on the fee schedule set forth in Exhibit B.
- 2.6 Payment of Taxes.** Professional is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.7 Payment upon Termination.** In the event that the City or Professional terminates this Agreement pursuant to Section 8, the City shall compensate the Professional for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Professional shall maintain adequate logs and timesheets in order to verify costs incurred to that date.
- 2.8 Authorization to Perform Services.** The Professional is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Professional shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Professional only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Professional's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Professional, at its own cost and expense, shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Professional and its agents, representatives, employees, and subcontractors. Professional shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Professional shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Professional's bid. Professional shall not allow any subcontractor to

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commence work on any subcontract until Professional has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Professional shall maintain all required insurance listed herein for the duration of this Agreement.

- 4.1 Workers' Compensation.** Professional shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Professional. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Professional may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Professional, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by first class mail, postage prepaid, has been given to the City, ten (10) days notice if cancellation is due to nonpayment of premium. Professional shall notify City within fourteen (14) days of notification from Professional's insurer if such coverage is suspended, voided or reduced in coverage or in limits.

The requirement to maintain Statutory Worker's Compensation and Employer's Liability Insurance insurance may be waived by the City upon written verification that Professional does not have any employees.

4.2 Commercial General and Automobile Liability Insurance.

- 4.2.1 General requirements.** Professional, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000.00) and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00). The commercial general liability and automobile liability insurance shall be per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a commercial general liability insurance or an automobile liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from

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activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general liability coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), Code 1 (any auto). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. City and its officers, employees, agents, and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Professional, including the insured's general supervision of Professional; products and completed operations of Professional; premises owned, occupied, or used by Professional; and automobiles owned, leased, or used by the Professional. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of Professional to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by first class mail, , has been given to the City, ten (10) days notice if cancellation is due to nonpayment of premium. Professional shall notify City within fourteen (14) days of notification from Professional's insurer if such coverage is suspended, voided or reduced in coverage or in limits.

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- 4.3 Professional Liability Insurance.** Professional, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000) covering the licensed professionals' errors and omissions.
- 4.3.1** Any deductible or self-insured retention shall not exceed \$250,000 per claim.
- 4.3.2** An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by first class mail, postage prepaid, has been given to the City, ten (10) days notice if cancellation is due to nonpayment of premium.
- 4.3.3** The following provisions shall apply if the professional liability coverages are written on a claims-made form:
- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
 - b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
 - c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Professional must provide extended reporting coverage for a minimum of five (5) years after completion of the Agreement or the work. The City shall have the right to exercise, at the Professional's sole cost and expense, any extended reporting provisions of the policy, if the Professional cancels or does not renew the coverage.
 - d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 All Policies Requirements.

- 4.4.1 Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.
- 4.4.2 Verification of coverage.** Prior to beginning any work under this Agreement, Professional shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized

by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

4.4.3 Subcontractors. Professional shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.4.4 Deductibles and Self-Insured Retentions. Professional shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of Contract Administrator, Professional may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The Contract Administrator may condition approval of an increase in deductible or self-insured retention levels with a requirement that Professional procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

4.4.5 Waiver of Subrogation. Professional hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Professional, its employees, agents, and subcontractors.

4.4.6 Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Professional shall provide written notice to City at Professional's earliest possible opportunity and in no case later than five (5) days after Professional is notified of the change in coverage.

4.5 Remedies. In addition to any other remedies City may have if Professional fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Professional's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

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- Order Professional to stop work under this Agreement or withhold any payment that becomes due to Professional hereunder, or both stop work and withhold any payment, until Professional demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND PROFESSIONAL'S RESPONSIBILITIES.

- 5.1 General Requirement.** Professional shall indemnify, defend with counsel approved by the City, and hold harmless the City and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Professional or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Professional shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, or volunteers and (2) the actions of Professional or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Professional to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Professional from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Professional acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.
- 5.2 PERS Indemnification.** In the event that Professional or any employee, agent, or subcontractor of Professional providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Professional shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Professional or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.
- 5.3 Design Professionals.** Notwithstanding Sections 5.1 and 5.2, to the extent that the services under this Agreement include design professional services subject to California Civil Code Section 2782.8, as may be amended from time to time, Professional's duty to indemnify shall only be to the maximum extent permitted by California Civil Code Section 2782.8.

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Section 6. STATUS OF PROFESSIONAL.

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Professional shall be an independent contractor as defined in Labor Code Section 3353, and shall not be an employee of City. Nothing contained in this Agreement shall be construed to be inconsistent with the foregoing relationship or status. City shall have the right to control Professional only insofar as the results of Professional's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City shall not have the right to control the means by which Professional accomplishes services rendered pursuant to this Agreement. Professional shall have no power or authority by this Agreement to bind the City in any respect. All employees and agents hired or retained by Professional are employees and agents of Professional and not of the City. The City shall not be obligated in any way to pay any wage claims or other claims made against Professional by any such employees or agents, or any other person resulting from performance of this Agreement.

Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Professional and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits. Professional shall not allow any employee to become eligible for a claim for PERS benefits.

- 6.2 Professional Not an Agent.** Except as City may specify in writing, Professional shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Professional shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Professional and any subcontractors shall comply with all laws and regulations applicable to the performance of the work hereunder, including but not limited to, the California Building Code, the Americans with Disabilities Act, and any copyright, patent or trademark law. Professional's failure to comply with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.

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- 7.3 Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Professional and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 Licenses and Permits.** Professional represents and warrants to City that Professional and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Professional represents and warrants to City that Professional and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Professional and any subcontractors shall obtain and maintain valid Business Licenses from City during the term of this Agreement.
- 7.5 Nondiscrimination and Equal Opportunity.** Professional shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Professional under this Agreement. Professional shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Professional thereby.

Professional shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 Termination.** City may cancel this Agreement at any time and without cause upon written notification to Professional.

Professional may cancel this Agreement upon thirty (30) days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Professional shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Professional delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Professional or prepared by or for Professional or the City in connection with this Agreement.

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- 8.2 Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Professional understands and agrees that, if City grants such an extension, City shall have no obligation to provide Professional with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Professional for any otherwise reimbursable expenses incurred during the extension period.
- 8.3 Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 Assignment and Subcontracting.** City and Professional recognize and agree that this Agreement contemplates personal performance by Professional and is based upon a determination of Professional's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Professional. Professional may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Professional shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.
- 8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Professional shall survive the termination of this Agreement.
- 8.6 Options upon Breach by Professional.** If Professional materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:
- 8.6.1** Immediately terminate the Agreement;
 - 8.6.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Professional pursuant to this Agreement;
 - 8.6.3** Retain a different Professional to complete the work described in Exhibit A not finished by Professional; or
 - 8.6.4** Charge Professional the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Professional pursuant to Section 2 if Professional had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

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- 9.1 **Records Created as Part of Professional's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Professional prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Professional hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Professional agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.
- 9.2 **Professional's Books and Records.** Professional shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Professional pursuant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Professional to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Sacramento or in the United States District Court for the Eastern District of California.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so

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adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 Use of Recycled Products.** Professional shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 Conflict of Interest.** Professional may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Professional in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Professional shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Professional hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Professional was an employee, agent, appointee, or official of the City in the previous twelve months, Professional warrants that it did not participate in any manner in the forming of this Agreement. Professional understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Professional will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Professional will be required to reimburse the City for any sums paid to the Professional. Professional understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

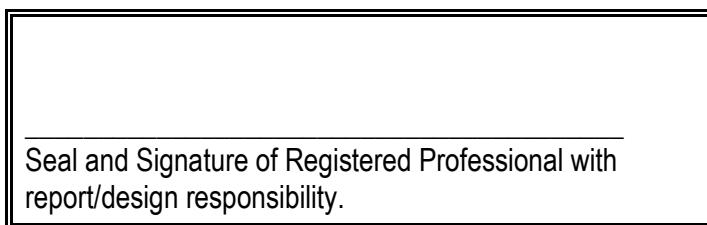
- 10.8 Solicitation.** Professional agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 Contract Administration.** This Agreement shall be administered by Mr. Albert V. Warot ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 Notices.** Any written notice to Professional shall be sent to:

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Willdan Engineering
 2150 River Plaza Drive, Suite 300
 Sacramento, CA 95833

Any written notice to City shall be sent to:
 Jessica Hayes
 2729 Prospect Park Drive
 Rancho Cordova, CA 95670

- 10.11 Professional Seal.** Where applicable in the determination of the contract administrator or when required by law, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.



- 10.12 Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A, and the compensation schedule attached hereto and incorporated herein as Exhibit B, represents the entire and integrated agreement between City and Professional and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 10.13 IRS Form W-9.** Professional shall complete and submit Internal Revenue Service Form W-9 to the City before execution of this Agreement. The City's Finance Director shall have authority to waive this requirement.
- 10.14 HCD Funded Contracts.** Architects performing work that is funded, either partially or fully, by the Department of Housing and Community Development shall be subject to additional requirements, as specified in Exhibit C. Exhibit C applies to all sub-contracts, consultants, and sub-consultants engaged by the Architect for this project. All new contracts with sub-contractors, consultants, and sub-consultants will include Exhibit C as an attachment. All existing contracts with sub-contractors, consultants, and sub-consultants for this project will be amended to include Exhibit C as a condition of employment.

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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first set forth above, which date shall be considered by the Parties to be the effective date of this Agreement.

CITY OF RANCHO CORDOVA

PROFESSIONAL

Ted A. Gaebler, City Manager

Albert V. Warot, Director of Planning

Date: _____

Date: _____

Attest:

Mindy Cuppy, CMC, City Clerk

Date: _____

Approved as to Form:

Adam Lindgren, City Attorney

Date: _____

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EXHIBIT A

SCOPE OF SERVICES

Professional shall be responsible for the administration and implementation of the City's Residential Rehabilitation Program (REHAB-O). The REHAB-O program shall be administered in accordance with the Program Guidelines developed for this program by the City and approved by the State Department of Housing and Community Development (HCD).

The specific tasks to be performed by the Professional in administering and implementing the REHAB-O Program shall be as follows:

REHAB-O Application Processing and Loan Packaging

1. Accept applications for housing rehabilitation assistance and conduct preliminary reviews to determine the completeness of the applications and household and property eligibility.
2. Conduct an in-home visit with applicants to explain the program in-depth and address any questions, and assist applicants in assembling any missing information.
3. Qualify owners for rehabilitation loans by verifying the details of each applicant's financial status, property value, and condition of title. This will be achieved by obtaining a preliminary title report from a title and escrow company, a credit report, and property appraisal. In addition, all current mortgage balances will be verified.
4. Assemble individual loan reports to include the applicant's financial history, bid selection, loan to property value ratio, preliminary title report, termite inspection report, appraisal, and loan recommendation.
5. Prepare environmental clearance documentation pursuant to CEQA or NEPA, as appropriate, including flood hazard determination and Section 106 approval from SHPO.
6. Submit detailed loan recommendations and reports for review and approval by the City's Housing Loan Committee. Consultant's Project Manager will be available to conduct committee meetings and answer any questions or concerns which may arise prior to and during these meetings.
7. Prepare full loan packages including preliminary title report, termite inspection report, certificate of hazard insurance, promissory note, deed of trust, truth-in-lending statement, etc.
8. Coordinate execution of loan documents by homeowner.
9. Manage the disbursement of loan proceeds through a title and escrow company or the City's Finance Department, through project close-out, for the payment of construction costs, termite inspections and permit fees.
10. Ensure program compliance with applicable equal opportunity requirements including incorporation of appropriate equal opportunity language in all advertisements, application materials, bid packages, and contracts.

Construction Management

1. As necessary, coordinate any temporary relocation and lead based paint noticing/abatement.

2. Conduct property inspections for code violations and rehabilitation work to bring the property into conformance with Building and Health and Safety Codes. Circulate the plans and project specifics for preliminary review and approval by the City's Building and Safety Division.
3. Coordinate comprehensive home energy audit with SMUD, PG&E or a licensed third-party professional, at no cost to homeowner, to identify potential energy conservation improvements that could reduce household energy consumption and costs.
4. Prepare work write-ups and cost estimates for eligible housing rehabilitation activities.
5. Prepare specifications and bid documents and coordinate procurement of competitive bids from State-licensed contractors and property owner review of bids received. Confirm that contractors are not debarred or suspended from performing CalHOME funded work.
6. Prepare for execution by the property owner and the contractor a construction contract and notice-to-proceed. Conduct preconstruction conference to review all projected work with the property owner and the contractor, and to make contractor fully aware that work should not start until all local permits and clearances have been obtained.
7. Conduct progress inspections to ensure that work is proceeding in a timely manner and according to plans, and that the quality of work meets the agreed upon standards. The inspections will also serve as a basis for the authorization of progress payments.
8. Execute rehabilitation certification and notice of completion upon final inspection, thus certifying that the rehabilitation has been completed in accordance with contract specifications.
9. Execute contract closure by acquiring lien releases from subcontractors (including product guarantees), securing all necessary sign-off documents, obtaining owner's authorization for final payment, and executing closeout of the case by ensuring that the permanent file contains the complete documentation required for government audit purposes.
10. Assist owners in securing labor and material repairs from contractors for warranties and construction defects for 1 year from date of final approval by the City's Building and Safety Division.
11. Advertise for and pre-qualify contractors for rehabilitation projects.

Program Management, Marketing and Reporting

1. Perform program outreach/marketing to locate eligible applicants and establish and maintain an interest/waiting list as necessary.
2. Set-up and maintain program implementation and loan applicant records. These files will be organized on a project-by-project basis, contain all information relevant to each case from application intake to notice of completion, and will be organized in accordance with CalHome or other funding source requirements. These files will be maintained so as to facilitate financial and procedural auditing of program operations.
3. Advertise for and pre-qualify contractors for rehabilitation projects.
4. Assist City in reviewing and updating Guidelines for the REHAB-O Program as necessary.
5. Provide City with monthly program activity/status reports.
6. Assist City staff with preparation of required quarterly and annual reports to HCD.

7. Assist City staff with preparation of CalHome draw requests, Activity Delivery Fee Reimbursement Forms, and Borrower Summary Sheets.
8. Assist City in preparing for and participate in monitoring of REHAB-O Program by HCD staff.

EXHIBIT B**COMPENSATION SCHEDULE**

NOTE: The not to exceed price in Section 2 – COMPENSATION represents the proposed not to exceed cost of \$129,600. This is the total not to exceed price since there are no reimbursable expenses associated with this Agreement. This represents approximately 18% of the 2012 CalHome Program allocation of \$720,000, and includes 16%, or \$115,200, for the Activity Delivery (Application Processing and Loan Packaging and Construction Management tasks described in Exhibit A), and 2% or \$14,400, for the Program Management, Marketing and Reporting tasks described in Exhibit A.

The hourly rates to be charged by the Consultant are as follows:

Albert Warot	\$150.00
Bob Porta	\$90.00
Marcus Bledsoe	\$85.00

All services described in Exhibit A are to be billed on a "Per-Project" basis.

EXHIBIT C

FOR ALL HCD-FUNDED CONTRACTS

The following requirements apply to all consultant work that is funded, either partially or fully, by grants from the California Department of Housing and Community Development.

C-1 **Civil Rights, HCD, and Age Discrimination Act Assurances.** During the performance of this Agreement, the Contractor assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, national origin, sex, age, or disability, under any program or activity funded by this contract, as required by Title VI of the Civil Rights Act of 1964, Title I of the Housing and Community Development Act of 1974, as amended, and the Age Discrimination Act of 1975, and all implementing regulations.

C-2 **Training, Employment, and Contracting Opportunities for Business and Lower Income Persons Assurance of Compliance.** The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given lower income residents of the project area and contracts for Work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

The parties to this Agreement will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued there under prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

The Contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advertising the said labor organization or worker's representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

The Contractor will include these Section 3 clauses in every contract and subcontract for work in connection with the project and will, at the direction of the State, take appropriate action pursuant to the contract upon a finding that the City of Rancho Cordova any contractor or subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135 and, will not let

any contract unless the City of Rancho Cordova or contractor or subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued there under prior to the execution of the Agreement shall be a condition of the Federal financial assistance provided to the project, binding upon the Contractor, its successors, and assigns. Failure to fulfill these requirements shall subject the Contractor, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

C-3

State Nondiscrimination Clause. During the performance of this contract, Contractor and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical disability, medical condition, marital status, age (over 40) or sex. Contractors and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.) The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

This Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

The Contractor hereby agrees to abide by the requirement of executive order 11246 and all implement regulations of the Department of Labor.

C-4

Anti-Lobbying Certification. Contractor shall require that the language of this certification be included in all subcontracts entered into in connection with this grant activity or activities and that all subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and no more than \$100,000 for such failure.

The undersigned certifies, to the best of his or her knowledge or belief, that:

A. No Federally appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

B. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C-5 **Conflict of Interest.** No member, officer, or employee of the City of Rancho Cordova, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercise any functions or responsibilities with respect to the program during his/her tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for grant activities to be performed in connection with the program assisted under this Agreement.

No member of or delegate to the Congress of the United States, and no resident commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise from the same.

C-6 **Worker's Compensation Insurance.** The Contractor will maintain at least the minimum state-required Workers' Compensation insurance for those employees who will perform work under this Agreement or undertake self-insurance in accordance with the provisions of state law requiring all employers to maintain such insurance, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700).

C-7 **General Insurance.** The Contractor shall have and maintain in full force and effect during the term of this contract such forms of insurance, at such levels described below.

Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single

limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

Contractor and subcontractors shall maintain, if so required by law, unemployment insurance, disability insurance and liability insurance, which is reasonable to compensate any person, firm, or corporation who may be injured or damaged by the contractor or any subcontractor in performing the grant activity or activities or any part of it.

- C-8** **Records Retention.** The Contractor agrees that the City, the California Department of Housing and Community Development or their designees will have the right to review, obtain, and copy all records pertaining to performance of this contract. The Contractor agrees to provide the City, the California Department of Housing and Community Development or their designees with any relevant information requested and shall permit the City, the California Department of Housing and Community Development or their designees access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with California Public Contract Code (PCC) Section 10115 et seq., Government Code (GC) Section 8546.7 and 2 CCR 1896.60 et seq. The Contractor further agrees to maintain such records for a period of five (5) years after final payment under this contract, or five (5) years from the conclusion or resolution of any disputes related to the performance of this Agreement and any amendments hereto, whichever is longer. The Contractor shall comply with the caveats and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in PCC 10115.10.
- C-9** **Monitoring/Auditing.** The Contractor shall permit the State, Federal government, the Bureau of State Audits, the California Department of Housing and Community Development and/or their representatives, upon reasonable notice, unrestricted access to any or all books, records, accounts, documentation, and all other materials relevant to this Agreement for the purpose of monitoring, auditing, or otherwise examining said materials.
- C-10** **Debarment.** Contractor certifies, by submission of this proposal or the signing of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

Where the Contractor or any subcontractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

By signing this contract, Contractor agrees that it shall not knowingly enter into any lower tier transaction with a person or entity that is proposed for debarment under 48 CFR 9, 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.

By signing this contract, Contractor agrees that it shall include the above certification in all lower tier transactions to which it is a party; and it shall require that each of its contractors include the certification in their subcontracts.

C-11

Drug-Free Workplace. Contractor shall comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and shall provide a drug-free workplace by taking the following actions:

- Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- Establish a Drug-Free Awareness Program to inform employees about: (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available counseling, rehabilitation and employee assistance programs; and (4) penalties that may be imposed upon employees for drug abuse violations.
- Every employee who works on the proposed contract will: (1) receive a copy of the Contractor's drug-free workplace policy statement; and (2) agree to abide by the terms of the Contractor's statement as a condition of employment under this Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: (1) the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Government Code Section 8350 et seq.)

C-12

Americans with Disabilities Act of 1990. The Contractor assures that it complies with the Americans with Disabilities Act of 1990 (ADA), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

C-13

Lead-Based Paint. Activities performed under this Agreement are subject to the lead-based paint hazard regulations at 24 CFR 35 and are subject to the

provisions for the elimination or mitigation of lead-based paint hazards under these Regulations. Contractor shall be informed of these requirements as it applies to construction and the disturbance of painted surfaces and adhere to them.

- C-14** **Child Support Compliance Act.** The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 Division 9 of the Family Code.

The Contractor, the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

- C-15** **Priority Hiring.** The Contractor shall give priority consideration in filling vacancies in positions funded by this Agreement to qualified recipients of aid under the Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code Section 10353.

- C-16** **Loss Leader.** It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e))

- C-17** **Compliance with Applicable Codes.** Contractor agrees to undertake all work in compliance with all applicable federal, state, and local housing and building codes, as applicable.

Contractor agrees to comply with all applicable provisions of the California Labor Code.

841.1001 1751412.3

841.1001 1751412.3

MEMORANDUM



DATE: December 17, 2012

TO: Honorable Mayor and Council Members

FROM: Cyrus Abhar, Public Works Director

SUBJECT: RESOLUTION AUTHORIZING CITY MANAGER TO MAKE APPLICATION FOR 1% LOAN FINANCING FROM THE CALIFORNIA ENERGY COMMISSION TO CONDUCT CITYWIDE STREET LIGHT RETROFITS

RECOMMENDATION

Adopt Resolution 118-2012

RESULT OF RECOMMENDED ACTION

Council adoption of Resolution 118-2012 will result in approval of five actions:

1. City Manager authorized to submit application for 1% loan financing for street light retrofits; and
2. City Council finds that the street light retrofit project is categorically exempt under California Environmental Quality Act (CEQA) regulations; and
3. Upon loan approval from the California Energy Commission ("CEC"), City Manager is authorized to accept loan financing in an amount up to \$2 million to conduct street light retrofits; and
4. Authorizes the payback of loan financing, plus interest, from energy and maintenance cost savings; and
5. Authorizes City Manager to execute all documents necessary in order to carry out the street light retrofit project with CEC 1% loan financing.

ADVANCES GOALS 1, 2, 5, & 6

BACKGROUND

In July of 2012 the City of Rancho Cordova executed an agreement with Sacramento County for Transition of Operations and Maintenance of Street Lights and Highway Safety Lights in Rancho Cordova, otherwise known as detachment from County Service Agreement Area 1 ("CSA-1"). CSA-1 is a County formed assessment district, which collects a direct levy on property tax bills, to fund the operations and maintenance of street lights county-wide.

Detachment from CSA-1 resulted in the formation of the Rancho Cordova Lighting District ("RCLD"), which collects the same assessment levy as CSA-1, but provides greater flexibility for the City to operate and maintain street and highway safety lights in as efficient and cost effective a manner as possible.

The primary purpose for detachment from CSA-1 was due to inadequate funding for the cost of operations and maintenance of street and highway safety lights. When formed in 1986, CSA-1 did not take into account any assumptions on cost inflation. With electricity costs inflating at nearly three (3%) percent per year over the long-term, this has resulted in increased stress on street light operations and maintenance budget, causing the City to begin subsidizing street light operation and maintenance with other funds in recent years.

Since taking control of operations and maintenance of all street and highway safety lights in July, staff has researched ways to reduce costs. Initial cost reductions have already been realized by contracting a private company for maintenance services. However, reductions in maintenance costs do not resolve all of the problem. The City still needs to find additional ways to cut operations costs, and may need additional revenues in the future.

DISCUSSION

Overview

Staff has conducted extensive research into street lighting best practices and ways in which other jurisdictions have reduced operation costs. Increasingly popular in many jurisdictions is the retrofitting of current technology, gas-discharge street lights (also known as High Pressure Sodium or Mercury Vapor), with newer solid state lighting (also known as Light Emitting Diode, or “LED”).

Widespread LED street lighting retrofits began in northern California in 2010 as a result of grant funds from the U.S. Department of Energy, Energy Efficiency and Conservation Block Grant (“EECBG”) Program. Those jurisdictions that undertook LED retrofits in 2010 have seen a precipitous decline in operations costs, due to reductions in electricity consumption.

Overall industry-wide decline in manufacturing and installation costs of LED street lighting has produced a direct alternative to traditional lighting technologies. This decrease in capital cost has made system-wide street light retrofit projects financially feasible.

Advantages

There are three primary advantages of LED street lighting:

Energy Consumption

The primary advantage of LED lighting is a substantial reduction in energy consumption. LED street lighting has shown to produce electricity consumption reductions of greater than 60%.

Maintenance Regularity

LED lighting does not burn a gas; therefore, the light itself does not actually “burn out” like a traditional light bulb. This is advantageous because the lifespan of LED lights can be projected, allowing maintenance to be proactively planned as opposed to reactively replacing street light bulbs upon a resident report.

Lifespan

Further cost savings are gained with LED lights due to a much greater life expectancy than gas-discharge bulbs. LED street lights are generally rated for a life expectancy of 100,000+ hours, as compared to 24,000 hours for gas-discharge. This means that the

City will replace a gas-discharge street light bulb four or more times in the life of one LED street light head.

Concerns

There are three primary concerns with LED lighting:

Color

Many early generation LED lights were very bright, producing a “blue” like light. The look of these early lights was bothersome as it did not look natural. These concerns have largely been addressed in current generations of LED’s which have been manufactured to produce a more uniform white light, much like that of a fluorescent light.

Quality

Some LED lights produced years ago would look good upon initial light-up, but lost brightness quality over time. The degradation of those lights was due to heat produced inside the light housing. Better designs have helped current generation LED street lights to efficiently dissipate heat, resulting one hundred thousand (100,000) hours of light lifespan.

Cost

As previously mentioned, the capital cost of LED street lights in previous years has been reducing. The concern is whether or not this trend will continue, resulting in more advantageous pricing in a couple more years. Given current costs, retrofitting the lights is financially feasible now, but could be more feasible in the future.

Funding

The California Energy Commission (“CEC”) has made available low-interest financing for projects which reduce energy consumption and green house gas emissions (GHG). The available financing is in an amount up to \$3 million with a fixed interest rate of one (1%) percent. These funds are available to any public entity that is undertaking an energy efficiency upgrade of public facilities.

Eligibility for CEC loan funds require that projects produce a simple payback of capital funds borrowed, plus the fixed one percent (1%) interest rate, within 15 years. In addition, loan funds are made available on a first-come, first-served basis, with only \$25 million available state-wide. To date, the CEC has received and approved applications for approximately \$7 million of projects.

FISCAL IMPACT

Staff has conducted a cost analysis showing that the City could save in excess of 60% on electricity costs and approximately 50% on maintenance costs over the expected life of the LED street light replacements. This equates to approximately \$200,000 in cost savings each year.

The total capital cost for a city-wide retrofit to LED street lights is estimated to be \$1.8 million. The cumulative energy and maintenance cost savings expected from a city-wide LED street light retrofit project would pay off a \$1.8 Million CEC loan, plus approximately \$100,000 in interest, in under ten years time (**Attachment 3**). This meets the CEC eligibility requirements.

The life expectancy of LED street lights installed today would be over twenty (20) years. Since the loan funds would be paid down in less than ten years, the remaining years of lifespan cost savings would be used to establish a fund reserve in the RCLD. The fund reserve built over that period should be more than adequate to replace all street lights city-wide at the end of life of the LED lights.

The LED retrofit project will not fully resolve the funding issue with the RCLD. Since no cost inflator is currently included in the assessment, there is still a long-term inadequacy of funding. The inadequacy is due simply to the fact that electricity costs are expected to continue rising in decades to come, whereas the assessment collected will not rise. At some point in the future the City will be required to take additional measures to resolve the funding deficiency.

COUNCIL APPROVAL

In order to apply for, and upon approval accept and utilize, financing from the CEC, the City Council is required to take a number of actions. In an attempt to expedite this process, staff has included all actions in Resolution 118-2012 (**Attachment 1**). Council should note that in addition to authorizing the application for CEC loan financing, adoption of Resolution 118-2012 is a formal approval of a city-wide street light retrofit project costing approximately \$1.9 million dollars. Therefore, the result of the recommended action would authorize the City Manager or his designee to take any and all steps necessary in order to carry out a street light retrofit project city-wide.

As per City policy, any contracts for purchase of materials or labor for installation of such materials over \$100,000 would require further Council action.

ATTACHMENTS

1. Resolution 118-2012
2. Notice of CEQA Exemption
3. CEC Loan Application Simple Payback Calculator

ATTACHMENT 1**CITY OF RANCHO CORDOVA****RESOLUTION NO. 118-2012**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA
AUTHORIZING THE CITY MANAGER TO SUBMIT AN APPLICATION FOR 1% LOAN
FINANCING TO THE CALIFORNIA ENERGY COMMISSION TO FUND CITYWIDE STREET
LIGHT RETROFITS**

WHEREAS, the City of Rancho Cordova owns and maintains more than four thousand seven hundred (4,700) gas discharge street lights located throughout the City; and

WHEREAS, gas discharge lighting, such as high pressure sodium and mercury vapor bulbs, burn more than twice the amount of electricity than solid state light emitting diode (LED) lighting; and

WHEREAS, by retrofitting all gas discharge street lighting throughout the City of Rancho Cordova with LED street lighting, the City of Rancho Cordova can reduce street light electricity consumption by more than fifty (50%) percent, saving substantially on electricity costs for street lighting; and

WHEREAS, the California Energy Commission provides loans to local governments to finance energy efficiency improvements at an interest rate of one (1%) percent; and

WHEREAS, the City has analyzed the use of California Energy Commission funds to pay for capital costs of street light retrofits to LED lighting and can realize cost savings for the operation and maintenance of City street lights of more than sixty (60%) percent over the twenty (20) year expected life of the LED lighting installed.

NOW, THEREFORE, BE IT HEREBY RESOLVED THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA:

1. City Council authorizes the City Manager, or his designee, to apply for an energy efficiency loan from the California Energy Commission to implement energy efficiency measures; and
2. City Council finds that street light retrofits funded by the loan, if approved by the California Energy Commission, is a project that is categorically exempt under Title 14 California Code of Regulations, Article 19 Categorical Exemptions, Section 15301 Existing Facilities because all light retrofits consist of minor alterations to existing public structures involving no expansion of use beyond that existing at time of determination; and
3. If approved by the California Energy Commission, City Council authorizes the City Manager, or his designee, to accept a loan up to two million (\$2,000,000) dollars; and
4. If accepted, the amount of the loan will be paid in full, plus interest, under the terms and conditions of the Loan Agreement, Promissory Note, and Tax Certificate of the California Energy Commission; and
5. City Council authorizes and empowers the City Manager, or his designee, to execute in the name of the City of Rancho Cordova all necessary documents to implement and

ATTACHMENT 1

carry out the purpose of this resolution, and to undertake all actions necessary to undertake and complete the energy efficiency project.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the _____ day of _____, 2012 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Linda Budge, Mayor

ATTEST:

Mindy Cuppy, CMC, City Clerk

Notice of Exemption

To: Office of Planning and Research
P.O. Box 3044, Room 212
Sacramento, CA 95812-3044

County Clerk
County of Sacramento

From: (Public Agency) City of Rancho Cordova
2729 Prospect Park Drive
Rancho Cordova, CA 95670

(Address)

Project Title: Citywide LED Street Light Retrofit Project

Project Location - Specific:

Replacement of approximately 4,736 street light heads, located throughout the entirety of the City of Rancho Cordova, from gas discharge street lighting to solid state light emitting diode (LED) street lighting heads.

Project Location – City: City of Rancho Cordova Project Location – County: County of Sacramento

Description of Nature, Purpose and Beneficiaries of Project:

The city will remove and replace approximately 4,736 gas discharge street light heads with solid state light LED street light heads with the purpose of reducing electricity consumption, carbon "footprint," and saving money. LED street lights have shown to save more than 60% on electricity consumption and cost, while simultaneously providing a more robust lighted environment enhancing public safety and aesthetics. All gas discharge bulbs removed as part of the project will be disposed of per state regulations on safe disposal of such materials.

Name of Public Agency Approving Project: City of Rancho Cordova

Name of Person or Agency Carrying Out Project: Cyrus Abhar, Public Works Director

Exempt Status: **(check one)**

- ☐ Ministerial (Sec. 21080(b)(1); 15268);
☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
☒ Categorical Exemption. State type and section number: Article 19, Section 15301 (existing facilities)
☐ Statutory Exemptions. State code number: _____

Reasons why project is exempt:

The project will by making minor alterations to existing public structures by replacing street light heads only, resulting in no expansion of the existing use of street light structures (poles).

Lead Agency
Contact Person: Cyrus Abhar, Public Works Director Area Code/Telephone/Extension: 916-851-8700

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? ☒ Yes ☐ No

Signature: _____ Date: _____ Title: Public Works Director

☒ Signed by Lead Agency

Date received for filing at OPR: _____

☒ Signed by Applicant

Revised 2005

ATTACHMENT 3
Summary of Recommended Energy Efficiency Measures in Loan Request

For each application, list the projects for which you are requesting a loan and identify the savings, project cost and payback for each project. Columns except for Simple Payback should total at the end of the table check to make sure totals are correct. Insert more rows as needed.

Project	Peak Demand Savings (kW)	Annual Electric Savings (kWh)	Annual Natural Gas Savings (therms)	Annual Other Energy Savings (specify units)	Annual Cost Savings	Project Installation Cost	Simple Payback (years)
Retrofit 4,736 gas discharge street lights with LED streetlights	N/A	2,315,773	0	0	\$ 194,159.00	\$ 1,809,733.40	9.32
TOTAL	0	#####	0	0	\$ 194,159.00	\$ 1,809,733.40	9.32

For Help Call (916) 654-4104

MEMORANDUM



DATE: December 17, 2012

TO: Honorable Mayor and Council Members

FROM: Cyrus Abhar, Public Works Director

SUBJECT: RESOLUTION OF INTENTION TO ESTABLISH COMMUNITY FACILITIES DISTRICT AND FUTURE ANNEXATION AREA NO. 2013-1 (STORM AND FLOOD PROTECTION SERVICES)

RECOMMENDATION

Adopt Resolution No. 121-2012.

RESULT OF RECOMMENDED ACTION

Action on this item will declare the Council's intention to establish the Community Facilities District and Future Annexation Area No. 2013-1 (Storm and Flood Protection Services) and a future annexation area, designate the name of the district, state the Council's intention to levy a special tax to pay for storm and flood protection services, and set 5:30 p.m. on January 22, 2013 as the time and date for a public hearing on the matter.

ADVANCED GOALS 5.

BACKGROUND

The Council has approved projects in the City, including the Montelena project. This project has a condition of approval which requires that the property owner annex to a new District to be formed by the City of Rancho Cordova to fund operation and maintenance of the storm drainage system. This condition will be satisfied by the formation of and participation in a CFD for storm and flood protection services which is the subject of tonight's action.

The property owner of the Montelena project has requested the City form a community facilities district pursuant to the Mello-Roos Community Facilities Act of 1982 (State of California Government Code Section 53311 et seq.) to provide the method of financing for storm and flood protection services required to meet the condition.

DISCUSSION

The property owner submitted a petition for the City to institute the proceedings to form a Mello-Roos Community Facilities District. In addition, the property owner advanced funds to fund costs associated with the formation of the CFD. This district is proposed to be called the City of Rancho Cordova Community Facilities District No. 2013-1 (Storm and Flood Protection Services), County of Sacramento, State of California (hereinafter

referred to as “CFD No. 2013-1.”) CFD No. 2013-1 will initially include the project generally known as the Montelena Project, but can expand in the future as other projects in need of maintenance of public storm drain and flood protection improvements annex to the district. The maintenance services to be funded by special taxes include the furnishing of services and materials for the ordinary and usual operation, maintenance, and servicing of the storm drain and flood protection improvements. Section 53320 of the Mello-Roos Act requires that City Council consider a resolution of intention to form a community facilities district within 90 days after a petition is filed with the City.

A Resolution of Intention to establish CFD No. 2013-1 is attached. The resolution sets forth the City’s intention to establish the CFD, designates the name of the district, identifies the services to be funded, and states the City’s intention to levy a special tax to pay for these services. The resolution also sets forth a Future Annexation Area where future projects may annex upon the unanimous consent of property owners. By designating a Future Annexation Area, future developments may annex into CFD No. 2013-1 without any further public hearing if there is unanimous consent to the annexation by all property owners within the territory to be annexed. A boundary map for each annexation must still be approved by City Council, but there is no public hearing required for such approval. This process will allow future annexations to proceed with cost and time savings. Designation of a Future Annexation Area does not preclude further annexations or zones, outside this area, to be added to the district. The resolution also sets 5:30 p.m., or as soon thereafter as possible, on January 22, 2013 as the time and date for a hearing on the matters set forth therein. Notice of the Public Hearing will be published in the Grapevine Independent at least seven days prior to the hearing date. Furthermore, a notice of the hearing will be mailed to each property owner within the proposed district boundaries.

Attached to the Resolution of Intention is a boundary map (**Exhibit A**) that describes the proposed boundaries of CFD No. 2013-1 as well as the boundary of the Future Annexation Area, description of the types of maintenance services to be provided (**Exhibit B**), and the proposed Rate and Method of Apportionment (RMA) of Special Tax for CFD No. 2013-1 (**Exhibit C**), which details how the special tax will be levied on properties commencing with Fiscal Year 13/14. The RMA establishes maximum taxes for ordinary use parcels based on land use classifications based upon fair share contributions towards the costs to maintain the storm and flood protection services in the City.

The maximum special rates for Fiscal Year 2013/2014 for ordinary use parcels in the RMA are summarized on the following table:

Table 1

Land Use Class	Maximum Special Tax
Single Family Residential (Detached)	\$140 per Unit
Single Family Residential (Attached)	\$100 per Unit
Multi-Family Residential	\$59 per Unit
Commercial Property	\$1,598 per Acre
Industrial Property	\$1,514 per Acre
Private Institutional	\$1,170 per Acre
Private Recreational	\$490 per Acre

As projects annex into CFD No. 2013-1, staff will determine the appropriate rate category applicable per land use category and any additional factors specifically related to each project.

In tonight's action, the council is requested to Adopt Resolution No. XX-2012 which preliminarily approves the Boundary Map, declares the Council's intention to levy a special tax for the services financed by the CFD, calls for the preparation of a CFD Report, sets January 22, 2013 as the date and time for a public hearing on the formation of the district and the levy of a special tax, and directs the City Clerk to give notice of the public hearing.

ATTACHMENT

Resolution No. 121-2012 with Exhibits A-C

CITY OF RANCHO CORDOVA

RESOLUTION NO. 121-2012

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA
OF INTENTION TO ESTABLISH A COMMUNITY FACILITIES DISTRICT
AND FUTURE ANNEXATION AREA**

**CITY OF RANCHO CORDOVA
Community Facilities District No. 2013-1
(Storm and Flood Protection Services)**

WHEREAS, under Mello-Roos Community Facilities Act of 1982, Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing at Section 53311, of the California Government Code (the "Act"), this Council is authorized to establish a community facilities district and to act as the legislative body for a community facilities district; and

WHEREAS, this Council, having received petitions from the owners of not less than 10% of the area of land proposed to be included in the proposed community facilities district, now desires to proceed with the establishment of a community facilities district in order to finance costs of public services for storm and flood protection and to maintain public infrastructure necessary or incident to development in an area of the City; and

WHEREAS, pursuant to Section 53339.2 of the Act, this Council further desires to undertake proceedings to provide for future annexation of territory to the proposed community facilities district.

NOW, THEREFORE, IT IS ORDERED as follows:

1. Authority. This Council proposes to conduct proceedings to establish a community facilities district pursuant to the Act, and hereby determines that public convenience and necessity require that a future annexation area be established pursuant to the Act.

2. Name of CFD; Name of Future Annexation Area. The name proposed for the community facilities district is City of Rancho Cordova Community Facilities District No. 2013-1 (Storm and Flood Protection Services) (the "CFD").

The name proposed for the territory proposed to be annexed into the CFD in the future is "City of Rancho Cordova Community Facilities District No. 2013-1 (Storm and Flood Protection Services) (Future Annexation Area)" (the "Future Annexation Area").

3. Boundaries Described. The proposed boundaries of the CFD and the Future Annexation Area are as shown on the map of it on file with the City Clerk, a copy of which is attached and marked **Exhibit A**, which boundaries are hereby preliminarily approved and to which map reference is hereby made for further particulars. The City Clerk is hereby directed to record, or cause to be recorded, the map of the boundaries of the CFD and the Future Annexation Area in the office of the Sacramento County Recorder within fifteen days of the date of adoption of this Resolution, but in any event at least fifteen days prior to the public hearing specified below.

Parcels within the Future Annexation Area shall be annexed to the CFD only with the unanimous approval (each, a "Unanimous Approval") of the owner or owners of each parcel or parcels at the time that parcel or those parcels are annexed, without any requirement for further public hearings or additional proceedings.

4. Services. The type of services proposed to be financed by the CFD and pursuant to the Act shall consist of those listed on **Exhibit B** hereto and hereby incorporated herein (the "Services"). The Council hereby determines that the Services are necessary to meet increased demands placed upon local agencies as the result of development occurring within the area of the CFD and the Future Annexation Area. The services are in addition to those provided in the territory of the CFD and the Future Annexation Area as of the date hereof and will not supplant services already available within the territory of the CFD and the Future Annexation Area as of the date hereof. The City intends to provide the Services on an equal basis in the original territory of the CFD and, when it has been annexed to the CFD, the Future Annexation Area.

5. Special Tax. Except to the extent that funds are otherwise available to the CFD to pay for the Services, a special tax (the "Special Tax") sufficient to pay the costs thereof, secured by recordation of a continuing lien against all non-exempt real property in the CFD, will be levied annually within the CFD, and collected in the same manner as ordinary ad valorem property taxes, or in such other manner as this Council or its designee shall determine, including direct billing of the affected property owners. The proposed rate and method of apportionment of the Special Tax among the parcels of real property within the CFD in sufficient detail to allow each landowner within the proposed CFD to estimate the maximum amount such owner will have to pay, are described in **Exhibit C** attached hereto and hereby incorporated herein. This Council hereby finds that the provisions of Section 53313.6, 53313.7 and 53313.9 of the Act (relating to adjustments to ad valorem property taxes and schools financed by a community facilities district) are inapplicable to the proposed CFD.

As required by Section 53339.3(d) of the Act, the Council hereby determines that the special tax proposed to pay for one or more Services to be supplied within the Future Annexation Area will be equal to the special taxes levied to pay for the same Services in the original area of the CFD, except that a higher or lower tax may be levied within the territory proposed to be annexed or to be annexed in the future to the extent that the actual cost of providing the services in that territory is higher or lower than the cost of providing those services in the existing district.

6. Exempt Property. Except as may otherwise be provided by law or by the rate and method of apportionment of the Special Tax for the CFD, all lands owned by any public entity, including the United States, the State of California and/or the City, or any departments or political subdivisions thereof, shall be omitted from the levy of the Special Tax to be made to cover the costs and expenses of the Services and the CFD. In the event that a portion of the property within the CFD shall become for any reason exempt, wholly or in part, from the levy of the Special Tax, this Council will, on behalf of the CFD, increase the levy to the extent necessary upon the remaining property within the CFD which is not exempt in order to yield the required debt service payments and other annual expenses of the CFD, if any, subject to the provisions of the rate and method of apportionment of the Special Tax.

7. Election and Unanimous Approval. The levy of the Special Tax shall be subject to the approval of the qualified electors of the CFD at a special election. The proposed voting procedure shall be by mailed or hand-delivered ballot among the landowners in the proposed CFD, with each owner having one vote for each acre or portion of an acre such owner owns in the CFD.

A special tax shall be levied in the Future Annexation Area only with the Unanimous Approval of the owner or owners of each parcel or parcels at the time that parcel or those parcels are annexed, without any requirement for further public hearings or additional proceedings.

8. CFD Report. The City's Director of Public Works (or deputy or designee thereof) as the officer having charge and control of the Services in and for the CFD, or the designee of such officer, is hereby directed to study said proposed Services and to make, or cause to be made, and file with the City Clerk a report in writing, (the "CFD Report"), which shall be a part of the record of the public hearing hereinafter specified and which report shall present the following:

(a) A description of the Services by type which will be required to adequately meet the needs of the CFD.

(b) An estimate of the fair and reasonable cost of the Services including the cost of acquisition of lands, rights-of-way and easements, any physical facilities required in conjunction therewith and incidental expenses in connection therewith, and all other related costs as provided in Section 53345.3 of the Act.

9. Public Hearing. Monday, January 22, 2013, at 5:30 p.m. or as soon as possible thereafter, in the City Hall, Council Chambers, 2729 Prospect Park Drive, Rancho Cordova, California, be, and the same are hereby appointed and fixed as the time and place when and where this Council, as legislative body for the CFD, will conduct a public hearing on the establishment of the CFD and the Future Annexation Area and consider and finally determine whether the public interest, convenience and necessity require the formation of the CFD, the Future Annexation Area and the levy of the Special Tax.

10. Notice of Hearing. The City Clerk is hereby directed to cause notice of the public hearing to be given by publication one time in a newspaper published in the area of the CFD and the Future Annexation Area. The publication shall be completed at least seven days before the date of the public hearing specified above. The City Clerk may also cause notice of the hearing to be given to each property owner within the CFD by first class mail, postage prepaid, to each such owner's addresses as it appears on the most recent tax records of Sacramento County or as otherwise known to the City Clerk to be correct. Such mailing shall be completed not less than fifteen days before the date of the public hearing. Each of the notices shall be substantially in the form specified in Section 53322 of the Act, with a form summarizing the provisions hereof hereby specifically approved.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the ____ day of _____, 2012 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

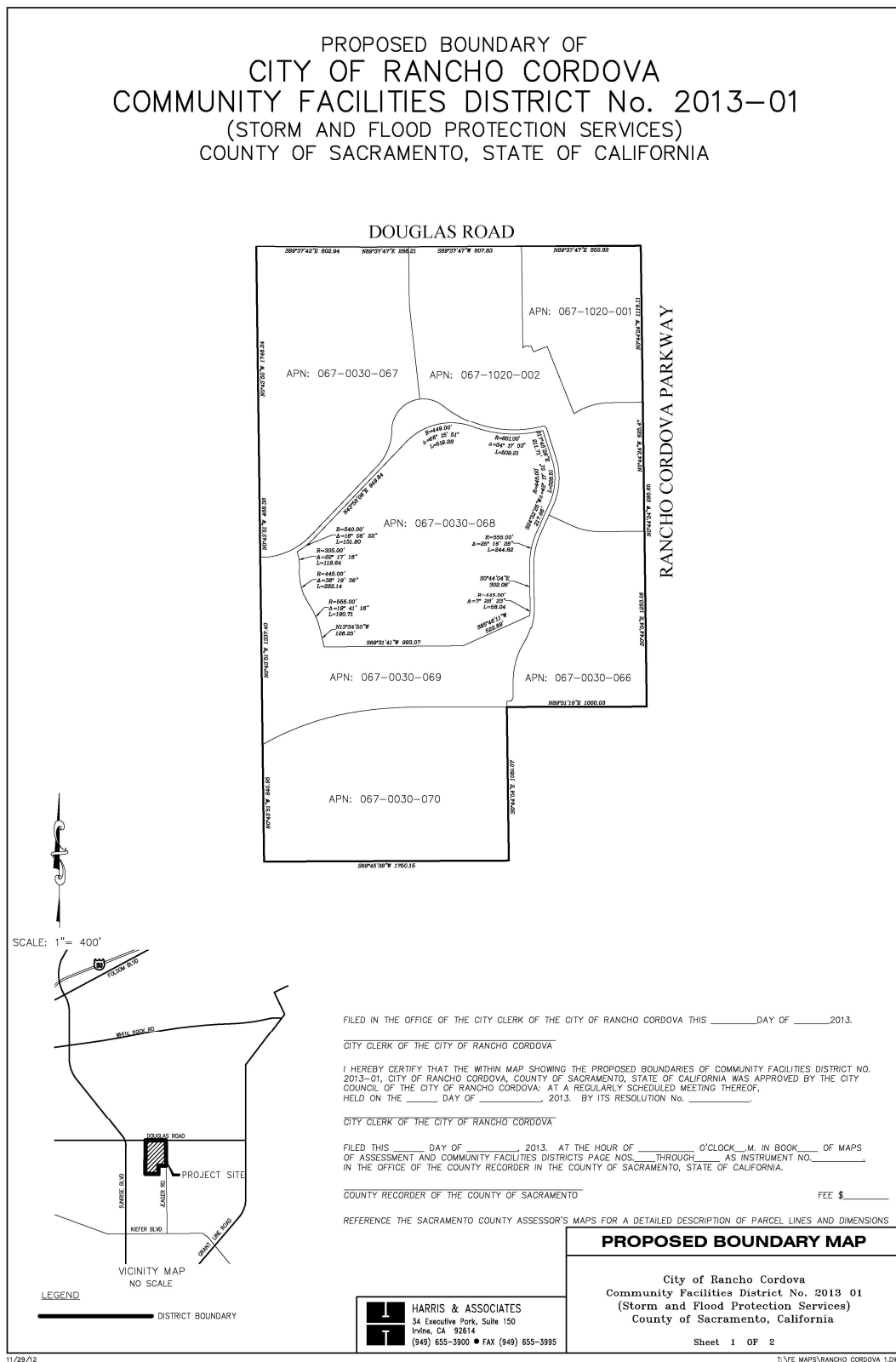
Linda Budge, Mayor

ATTEST:

Mindy Cuppy, City Clerk

EXHIBIT A

BOUNDARIES OF THE CFD AND FUTURE ANNATION AREA



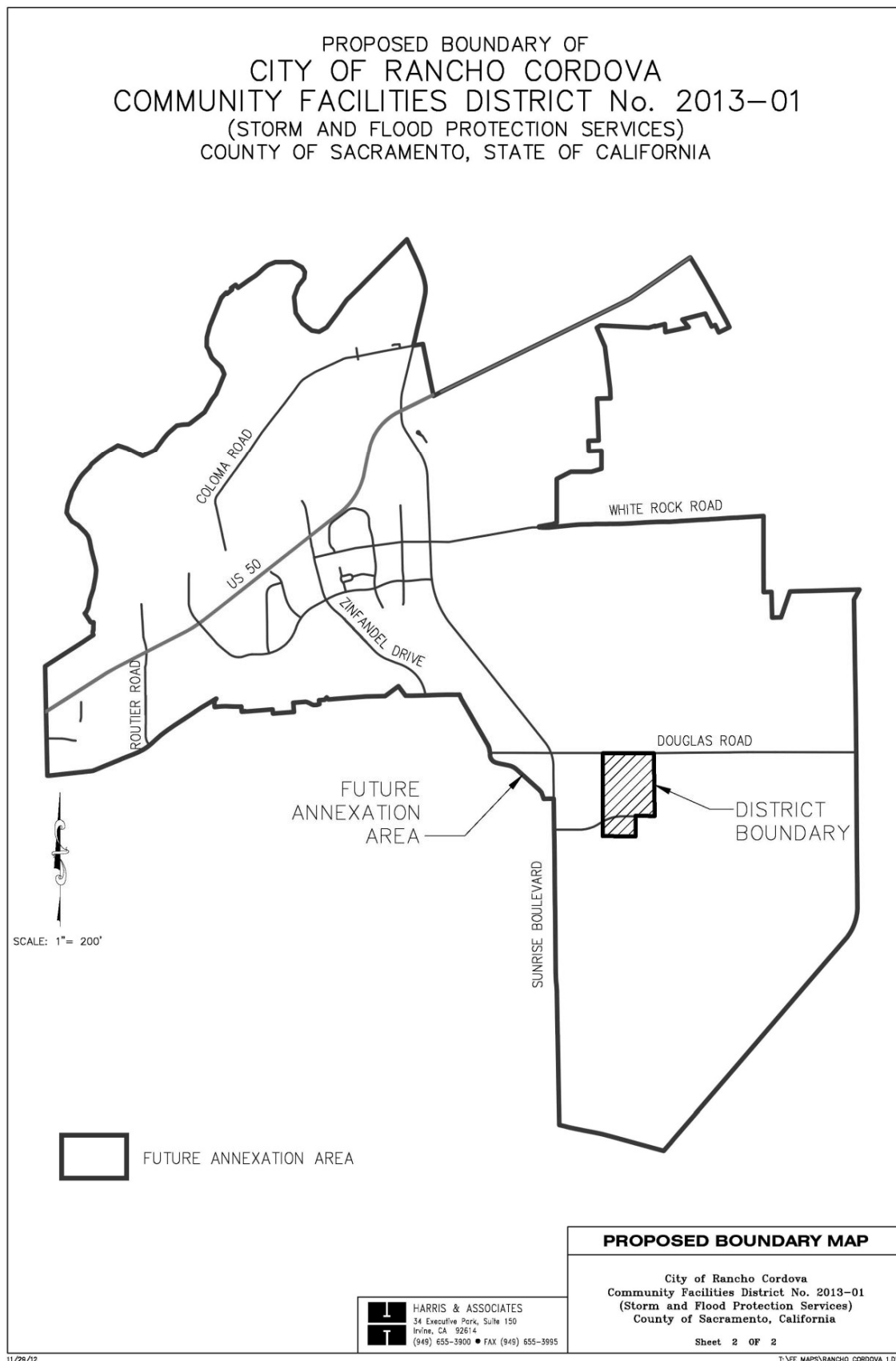


EXHIBIT B

CITY OF RANCHO CORDOVA COMMUNITY FACILITIES DISTRICT NO. 2013-1 (STORM AND FLOOD PROTECTION SERVICES)

DESCRIPTION OF DISTRICT SERVICES

Description of services:

Maintenance of public storm drain and flood protection improvements

- Maintenance means the furnishing of services and materials for the ordinary and usual operation, maintenance and servicing of the storm drain and flood protection improvements, dedicated easements, and appurtenant facilities, and administration and overhead of all aspects of the CFD.

Reserve Fund

- The CFD special taxes may be collected and set-aside in designated funds, collected over several years, that may be used by the CFD to fund future repairs to storm and flood protection improvements and other services as determined by the CFD.

EXHIBIT C**CITY OF RANCHO CORDOVA
COMMUNITY FACILITIES DISTRICT NO. 2013-1
(STORM AND FLOOD PROTECTION SERVICES)****RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX**

EXHIBIT C

CITY OF RANCHO CORDOVA COMMUNITY FACILITIES DISTRICT NO. 2013-01 (STORM AND FLOOD PROTECTION SERVICES)

RATE AND METHOD OF APPORTIONMENT

A Special Tax of Community Facilities District No. 2013-01 (Storm and Flood Protection Services) of the City of Rancho Cordova (the “District”) shall be levied on all Assessor’s Parcels in the District and collected each Fiscal Year commencing in Fiscal Year 2013-14 in an amount determined by the City through the application of the rate and method of apportionment of the Special Tax set forth below. All of the real property in the District, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent and in the manner provided.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

“Acre or Acreage” means the land area of an Assessor’s Parcel as shown on an Assessor’s Parcel Map, or if the land area is not shown on an Assessor’s Parcel Map, the land area shown on the applicable final subdivision map, other final map, other parcel map, other condominium plan, or functionally equivalent map or instrument recorded in the Office of the County Recorder. If area shown on said map is in square footage, Acreage shall be calculated by dividing the square footage by 43,560.

“Act” means the Mello-Roos Community Facilities Act of 1982, being Chapter 2.5, Part 1, Division 2 of Title 5 of the Government Code of the State of California, as amended.

“Administrator” means the Director of Public Works or his/her designee or other person designated by the City to administer the Special Taxes according to this Rate and Method of Apportionment.

“Administrative Expenses” means the actual or estimated costs incurred by the City as Administrator of the District to determine, levy and collect the Special Taxes, including, but not limited to: legal counsel, the costs of placing and collecting installments of the Special Tax upon general property tax rolls, salaries and benefits of City employees whose duties are directly related to administration of the District and the fees of consultants, preparation of required reports, and any other costs required to administer the District as determined by the City.

“Annual Escalation Factor” means the lesser of the increase in the annual percentage change (from January of the previous year to January of the year that the Special Tax is levied) of the All Urban Consumers – Consumers Price Index (CPI) or five percent (5%). The annual CPI used shall be for the area of San Francisco-Oakland-San Jose as determined by the United States Bureau of Labor Statistics as reported. In the event that the CPI defined above is no longer reported, the City Council shall select a similar index to replace it.

“Assessor’s Parcel” means a lot or parcel in an Assessor’s Parcel Map with an assigned assessor’s parcel number.

“Assessor’s Parcel Map” means an official map of the Assessor of the County designating parcels by assessor’s parcel number.

“Base Year” means Fiscal Year ending June 30, 2014.

“City” means the City of Rancho Cordova in the County of Sacramento, California.

“City Council” means the City Council of the City, acting as the legislative body of the District.

“County” means the County of Sacramento, California.

“District” means Community Facilities District No. 2013-01 (Storm and Flood Protection Services) of the City of Rancho Cordova.

“Developed Commercial” means all Assessor’s Parcels of Developed Property for which a building permit has been issued for purposes of constructing a commercial structure, including, but not limited to, retail, office (including medical offices), hotel, motel, restaurant and other like uses.

“Developed Industrial” means all Assessor’s Parcels of Developed Property for which a building permit has been issued for purposes of constructing an industrial structure, including, but not limited to, manufacturing, warehousing, research & development and other like uses.

“Developed Multi-Family Residential” means all Assessor’s Parcels of Developed Property for which a building permit has been issued for purposes of constructing a residential structure consisting of either:

- a) Five (5) or more units, all of which are offered for rent to the general public; or
- b) Five (5) or more attached units that (i) are available for sale to individual owners, and (ii) have living areas less than or equal to 1,200 square feet.

“Developed Private Institutional” means all Assessor’s Parcels of Developed Property for which a building permit has been issued for purposes of constructing a private institutional structure, including, but not limited to, private schools, hospitals, and nursing home uses.

“Developed Private Recreational” means all Assessor’s Parcels of Developed Property for which a building permit has been issued for purposes of constructing a private recreational facility, including, but not limited to, private golf courses, amusement parks, and parks.

“Developed Property” means the following Taxable Property, in any Fiscal Year:

- (1) All Assessor’s Parcels of Developed Single Family Residential (Detached) and Developed Single Family Residential (Attached) property for which a Final Map was recorded prior to June 1 of the preceding Fiscal Year, and
- (2) All Assessor’s Parcels of Developed Multi-Family Residential property for which a building permit was issued for construction of a residential structure prior to June 1 of the preceding Fiscal Year, and
- (3) All Assessor’s Parcels of Non-Residential property for which a building permit was issued for construction of a non-residential structure prior to June 1 of the preceding Fiscal Year.

“Developed Single Family Residential (Attached)” means all Assessor’s Parcels of Developed Property for which a building permit may be issued for purposes of constructing attached single family residential dwelling units consisting of either::

- a) Two to four (2-4) attached units, whether such units are offered for rent or for sale to individual owners; or
- b) Five (5) or more attached units that (i) are available for sale to individual owners, and (ii) have a living area greater than 1,200 square feet

“Developed Single Family Residential (Detached)” means all Assessor’s Parcels of Developed Property for which a building permit may be issued for purposes of constructing one single family residential detached dwelling unit.

“Final Map” means an Assessor’s Parcels Map, a final subdivision map, other parcel map, other final map, other condominium plan, or functionally equivalent map that has been recorded in the Office of the County Recorder.

“Fiscal Year” means the period starting July 1 and ending on the following June 30.

“Land Use Class” means any of the categories of Taxable Property listed in Table 1 by applicable special tax rate.

“Lot” means property within a recorded Final Map identified by a lot number for which a building permit has been issued or may be issued.

“Maximum Special Tax” means the maximum Special Tax, determined in accordance with Section C below that can be levied in the District in any Fiscal Year on any Assessor’s Parcel.

“Non-Residential” means all Assessor’s Parcels of Developed Property for which a building permit(s) may be issued for purposes of constructing a non-residential use and does not contain any residential units as defined under Developed Single Family Residential (Detached), Developed Single Family Residential (Attached) or Developed Multi-Family Residential.

“Proportionately” means in a manner such that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Assessor’s Parcels within each Land Use Class.

“Public Property” means any property within the boundaries of the District that is at the time of the District formation or at the time of an annexation, used or expected to be used for rights-of-way, parks, schools or any other public purpose and is owned by or irrevocably offered for dedication to the Federal government, the State, the City, the County or any other public agency.

“Special Tax” means the Special Tax to be levied in each Fiscal Year on each Assessor’s Parcel of Taxable Property to fund the Special Tax Requirement, and shall include Special Taxes levied or to be levied under Sections C and D, below.

“Special Tax Requirement” means that amount required in any Fiscal Year for the District to: (i) pay for Storm Drain Service Costs; (ii) pay reasonable Administrative Expenses; (iii) pay any amounts required to establish or replenish any reserve funds; and (iv) pay for reasonably anticipated delinquent Special Taxes based on the delinquency rate for Special Taxes levied in the

previous Fiscal Year; less any surplus of funds available from the previous Fiscal Year's Special Tax levy.

"State" means the State of California.

"Storm Drain Service Costs" means the contribution to the estimated and reasonable costs of providing storm drain and flood control services, including but not limited to (i) the costs and contracting services, (ii) the salaries and benefits of City staff that directly provide storm drain and flood control services, (iii) City overhead costs associated with providing such services within the District, and (iv) other costs incidental to providing storm drain and flood control services within the District.

"Taxable Property" means all of the Assessor's Parcels within the boundaries of the District and any future annexation to the District that are not exempt from the Special Tax pursuant to law or as defined herein.

"Tax-Exempt Property" means all Assessors Parcels not subject to the Special Tax. Tax-Exempt Property includes: (i) Public Property and (ii) property designated by the City or Administrator as Tax-Exempt Property.

"Undeveloped Property" means, for each Fiscal Year, all Assessor's Parcels of Taxable Property not classified as Developed Property, including an Assessor's Parcel that is designated as a remainder parcel and is not identified as potential Public Property by any final documents and/or maps available to the Administrator.

"Unit" means any separate residential dwelling unit in which a person or persons may live, which comprises an independent facility capable of conveyance separate from adjacent residential dwelling units and is not considered to be for commercial or industrial use.

B. ASSIGNMENT TO LAND USE CATEGORIES

Each Fiscal Year using the definitions above, all Taxable Property within the District shall be classified as Developed Property, or Undeveloped Property. Developed Property shall be further classified as Developed Single Family Residential (Detached), Developed Single Family Residential (Attached), Developed Multi-Family Residential, Developed Commercial, Developed Industrial, Developed Private Institutional, and Developed Private Recreational. Commencing with the Base Year and for each subsequent Fiscal Year, all Taxable Property shall be subject to Special Taxes pursuant to Sections C and D below.

C. MAXIUM SPECIAL TAX RATE

1. Developed Property

TABLE 1
Maximum Special Tax for Developed Property
Community Facilities District No. 2013-01
(Storm and Flood Protection Services)

	<u>Land Use</u>	<u>Maximum Special Tax</u>
1	Developed Single Family Residential (Detached)	\$140 /unit
2	Developed Single Family Residential (Attached)	\$100 /unit
3	Developed Multi-Family Residential	\$59 /unit
4	Developed Commercial	\$1,598 /acre
5	Developed Industrial	\$1,514 /acre
6	Developed Private Institutional	\$1,170 /acre
7	Developed Private Recreational	\$490 /acre

On each July 1 following the Base Year, the Maximum Special Tax rate shown in Table 1 shall be increased in accordance with the Annual Escalation Factor.

2. Undeveloped Property

No Special Tax shall be levied on Undeveloped Property until it becomes Developed Property.

3. Tax-Exempt Property

No Special Tax shall be levied on Tax-Exempt Property.

4. Multiple Units and Land Use Classes

In some instances an Assessor's Parcel may contain more than one Land Use Class. The Maximum Special Tax levied on an Assessor's Parcel with multiple Land Use Classes shall be calculated by summing the Maximum Special Tax attributable to each Land Use Class for that Assessor's Parcel.

D. METHOD OF APPORTIONMENT OF THE SPECIAL TAX

Commencing with Fiscal Year 2013-14, and for each subsequent Fiscal Year, the Administrator shall calculate the Special Tax Requirement based on the definitions in Section A and the rates in Table 1 and levy the Special Tax as follows until the amount of the Special Tax levied equals the Special Tax Requirement. The Special Tax shall be levied each Fiscal Year on each Assessor's Parcel of Developed Commercial, Developed Industrial, Developed Multi-Family Residential, Developed Private Institutional, Developed Private Recreation, Developed Single-Family Residential(Detached) and Developed Single-Family Residential(Attached) up to 100% of the applicable Maximum Special Tax.

E. APPEALS

Any taxpayer that believes that the amount of the Special Tax assigned to a Parcel is in error may file a written notice with the Administrator appealing the levy of the Special Tax. This notice is required to be filed with the Administrator during the Fiscal Year the error is believed to have occurred. The Administrator or designee will then promptly review the appeal and, if necessary, meet with the taxpayer. If the Administrator verifies that the tax should be changed the Special Tax levy shall be corrected and, and if applicable in any case, a refund shall be granted.

F. MANNER OF COLLECTION

Special Tax as levied pursuant to Section D above shall be collected in the same manner and at the same time as ordinary *ad valorem* property taxes; provided, however, that the Administrator may directly bill the Special Tax, may collect Special Taxes at a different time or in a different manner if necessary to meet the financial obligations of the district or as otherwise determined appropriate by the Administrator.

G. INTERPRETATION OF SPECIAL TAX FORMULA

The City reserves the right to make minor administrative and technical changes to this document that do not materially affect the rate and method of apportioning Special Taxes. In addition the interpretation and application of any section of this document shall be left to the City's discretion. The City may make interpretations by ordinance or resolution for purposes of clarifying any vagueness or ambiguity in the Rate and Method of Apportionment.

H. TERM OF SPECIAL TAX

The Special Taxes shall be levied in perpetuity.

MEMORANDUM



DATE: December 17, 2012

TO: Honorable Mayor and Council Members

FROM: Donna Silva, Finance Director

SUBJECT: RESOLUTION TEMPORARILY SUSPENDING THE ANNUAL PROGRAM FEE INFLATIONARY ADJUSTMENT FOR COMMUNITY FACILITIES IMPACT FEES (CFF)

RECOMMENDATION

Adopt Resolution 114-2012 temporarily suspending the automatic annual program fee inflationary adjustment for a period of one year for the community facilities impact fees.

RESULT OF RECOMMENDED ACTION

Adoption of the Resolution will suspend, for the third consecutive year, the automatic annual Engineering News Record (ENR) inflationary adjustment for the community facilities impact fees beginning January 1, 2013. This suspension will be for a period of one year.

ADVANCES GOALS: 5.

BACKGROUND

The City collects and administers development impact fees, which are one-time capital recovery charges collected on new building permits. They are used to mitigate the cost of new development by funding capital improvements needed to serve the new development.

On January 1 of each year, these fees are adjusted using the Engineering News Record (ENR). The index adjustment allows the City to keep pace with construction cost increases and inflation. In past years, the index has ranged from 8.0% to -0.3%. The 2012 adjustment would have been a 2.499% increase, down from last year's increase of 2.538%, which was also suspended.

Although the cost index has continued to increase, overall development has declined. Due to the continued economic downturn, which has resulted in a sharp drop in development activity, the City Council has suspended the inflationary adjustment for the past two years.

With the adoption of this resolution, a total of 8.81% in annual fee increases, or \$362.93 per single family residential unit, will have been suspended.

Due to the continued economic downturn, applying the program fee adjustment would impose a financial hardship and an economic deterrent to development in Rancho Cordova. Additionally, staff is currently in the process of reviewing the appropriate fee levels with the Building Industry Association (BIA).

PROJECTED DEVELOPMENT

The following table provides a comparison of development activity in the City from 2007 to 2012, and development projections for the current fiscal year.

Residential Development

	Permits Issued 06/07	Permits Issued 07/08	Permits Issued 08/09	Permits Issued 09/10	Permits Issued 10/11	Permits Issued 11/12	Projected Permits 12/13
Single Family	698	315	323	244	149	164	200
Percent of 6/07 Permits		45%	46%	35%	21%	23%	29%

While the housing market is slowly starting to make a recovery, the projected residential development activity for the upcoming budget year is still anticipated to be only 29% of the 2006/07 level. It is anticipated that non-residential development will continue to be below 2006/07 levels also.

Due to the ongoing City/BIA review of fee levels and the current housing market, staff is recommending that the City Council consider suspending the annual fee adjustments for an additional one year period, effective beginning January 1, 2013.

ATTACHMENT

Resolution 114-2012 Suspending Annual Fee Adjustments

CITY OF RANCHO CORDOVA

RESOLUTION NO. 114-2012

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA
TEMPORARILY SUSPENDING THE ANNUAL PROGRAM FEE INFLATIONARY
ADJUSTMENT FOR COMMUNITY FACILITIES IMPACT FEES (CFF)**

WHEREAS, the City collects and administers development impact fees to mitigate the cost of new development by funding capital improvements needed to serve the new development; and

WHEREAS, on January 1st of each year these fees are adjusted using the Engineering News Record (ENR) to keep pace with construction cost increases and inflation; and

WHEREAS, although the cost index has increased, overall development continues to be lower than 2006/07 levels due to the slow recovery of the housing market; and

WHEREAS, staff is currently in the process of reviewing the appropriate fee levels with the Building Industry Association (BIA).

WHEREAS, applying the program fee adjustment would impose a financial hardship and an economic deterrent to development in Rancho Cordova; and

NOW, THEREFORE, BE IT HEREBY RESOLVED THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA does authorize a temporary suspension of the annual program fee inflationary adjustment for community facilities impact fees (CFF) for a one year period.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the ____ day of _____, 2012 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Linda Budge, Mayor

ATTEST:

Mindy Cuppy, CMC, City Clerk

MEMORANDUM

DATE: December 17, 2012

TO: Honorable Mayor and Council Members

FROM: Donna Silva, Finance Director

SUBJECT: RESOLUTION OF INTENTION TO ESTABLISH COMMUNITY FACILITIES DISTRICT AND FUTURE ANNEXATION AREA NO. 2013-2 (POLICE SERVICES)



RECOMMENDATION

Adopt Resolution No. 122-2012.

RESULT OF RECOMMENDED ACTION

Adoption of the Resolution will declare the Council's intention to establish the Community Facilities District and Future Annexation Area No. 2013-2 (Police Services), designate the name of the district, state the Council's intention to levy a special tax to pay for police services, and set 5:30 p.m. on January 22, 2013 as the time and date for a public hearing on the matter.

ADVANCED GOAL: 5.

BACKGROUND

The Council has approved projects in the City, including the Montelena project. As part of this approval, the City and the developer entered into a development agreement. Requirement 6.4.4 of the development agreement requires the developer to annex into a new Community Facilities District to be formed by the City of Rancho Cordova to fund police protection services. This requirement will be satisfied by the formation of and participation in the CFD for police services which is the subject of tonight's action.

DISCUSSION

The property owner submitted a petition for the City to initiate action to form a Mello-Roos Community Facilities District ("CFD"). In addition, the property owner advanced funds to pay for their fair share of the costs associated with the formation of the CFD. This district is proposed to be called the City of Rancho Cordova Community Facilities District No. 2013-2 (Police Services), County of Sacramento, State of California (hereinafter referred to as "CFD No. 2013-2.") CFD No. 2013-2 will initially include the project generally known as the Montelena Project, but can expand in the future as other projects annex to the district. The authorized services to be funded by special taxes include (i) obtaining, furnishing, operating and maintaining police protection equipment or apparatus, (ii) paying the salaries and benefits of police protection personnel, and (iii) other such police protection service expenses as deem necessary for the benefit of residents in CFD No. 2013-2. Section 53320 of the Mello-Roos Act requires that City

Council consider a resolution of intention to form a community facilities district within 90 days after a petition is filed with the City.

A Resolution of Intention to establish CFD No. 2013-2 is attached. The resolution sets forth the City's intention to establish the CFD, designates the name of the district, identifies the services to be funded, and states the City's intention to levy a special tax to pay for these services. The resolution also sets forth a Future Annexation Area where future projects may annex upon the unanimous consent of property owners. By designating a Future Annexation Area, future developments may annex into CFD No. 2013-1 without any further public hearing if there is unanimous consent to the annexation by all property owners within the territory to be annexed. A boundary map for each annexation must still be approved by City Council, but there is no public hearing required for such approval. This process will provide cost and time savings to developers. Designation of a Future Annexation Area does not preclude further annexations or zones, outside this area, to be added to the district. The resolution also sets 5:30 p.m., or as soon thereafter as possible, on January 22, 2013 as the time and date for a hearing on the matters set forth therein. Notice of the Public Hearing will be published in a newspaper of general circulation at least seven days prior to the hearing date. Furthermore, a notice of the hearing will be mailed to each property owner within the proposed district boundaries.

Attached to the Resolution of Intention is a boundary map (**Exhibit A**) that describes the proposed boundaries of CFD No. 2013-2 as well as the boundary of the Future Annexation Area, description of the types of maintenance services to be provided (**Exhibit B**), and the proposed Rate and Method of Apportionment (RMA) of Special Tax for CFD No. 2013-2 (**Exhibit C**), which details how and when the special tax will be levied on properties within the district. The RMA establishes maximum taxes for each residential unit or residential unit equivalent which will be used to provide police services to the residents within the CFD.

As defined in the development agreement, the maximum special tax rate for the base year, Fiscal Year 2011/12, has been set at Four Hundred Fifty Dollars (\$450) annually per residential unit or residential unit equivalent. The special tax imposed by the CFD will be payable on a parcel within the district only after a building permit has been issued by the City and there will be no undeveloped land tax imposed by the CFD. The base year maximum special tax will automatically be adjusted annually, on July 1st, by the increase in the Consumer Price Index (CPI) from April to April.

As future projects annex into CFD No. 2013-2, staff will determine the appropriate rate category applicable per land use category and any additional factors specifically related to each project.

Staff recommends adoption of Resolution No. 122-2012 which preliminarily approves the Boundary Map, declares the Council's intention to levy a special tax for the services financed by the CFD, calls for the preparation of a CFD Report, sets 5:30 p.m., or as soon thereafter as possible, on January 22, 2013, as the time and date for a public hearing on the formation of the district and the levy of a special tax, and directs the City Clerk to give notice of the public hearing.

ATTACHMENT

Resolution No. 122-2012 with Exhibits A-C.

CITY OF RANCHO CORDOVA

RESOLUTION NO. 122-2012

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA OF
INTENTION TO ESTABLISH A COMMUNITY FACILITIES DISTRICT AND FUTURE
ANNEXATION AREA**

**CITY OF RANCHO CORDOVA
Community Facilities District No. 2013-2
(Police Services)**

WHEREAS, under Mello-Roos Community Facilities Act of 1982, Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing at Section 53311, of the California Government Code (the "Act"), this Council is authorized to establish a community facilities district and to act as the legislative body for a community facilities district; and

WHEREAS, this Council, having received petitions from the owners of not less than 10% of the area of land proposed to be included in the proposed community facilities district, now desires to proceed with the establishment of a community facilities district in order to finance the costs of police protection services required to meet the demands of development of lands in the City; and

WHEREAS, pursuant to Section 53339.2 of the Act, this Council further desires to undertake proceedings to provide for future annexation of territory to the proposed community facilities district.

NOW, THEREFORE, IT IS ORDERED as follows:

1. Authority. This Council proposes to conduct proceedings to establish a community facilities district pursuant to the Act, and hereby determines that public convenience and necessity require that a future annexation area be established pursuant to the Act.

2. Name of CFD; Name of Future Annexation Area. The name proposed for the community facilities district is City of Rancho Cordova Community Facilities District No. 2013-2 (Police Services) (the "CFD").

The name proposed for the territory proposed to be annexed into the CFD in the future is "City of Rancho Cordova Community Facilities District No. 2013-2 (Police Services) (Future Annexation Area)" (the "Future Annexation Area").

3. Boundaries Described. The proposed boundaries of the CFD and the Future Annexation Area are as shown on the map of it on file with the City Clerk, a copy of which is attached and marked **Exhibit A**, which boundaries are hereby preliminarily approved and to which map reference is hereby made for further particulars. The City Clerk is hereby directed to record, or cause to be recorded, the map of the boundaries of the CFD and the Future Annexation Area in the office of the Sacramento County Recorder within fifteen days of the date of adoption of this Resolution, but in any event at least fifteen days prior to the public hearing specified below.

Parcels within the Future Annexation Area shall be annexed to the CFD only with the unanimous approval (each, a "Unanimous Approval") of the owner or owners of each parcel or parcels at the time that parcel or those parcels are annexed, without any requirement for further public hearings or additional proceedings.

4. Services. The type of services proposed to be financed by the CFD and pursuant to the Act shall consist of those listed on Exhibit B hereto and hereby incorporated herein (the "Services"). The Council hereby determines that the Services are necessary to meet increased demands placed upon local agencies as the result of development occurring within the area of the CFD and the Future Annexation Area. The services are in addition to those provided in the territory of the CFD and the Future Annexation Area as of the date hereof and will not supplant services already available within the territory of the CFD and the Future Annexation Area as of the date hereof. The City intends to provide the Services on an equal basis in the original territory of the CFD and, when it has been annexed to the CFD, the Future Annexation Area.

5. Special Tax. Except to the extent that funds are otherwise available to the CFD to pay for the Services, a special tax (the "Special Tax") sufficient to pay the costs thereof, secured by recordation of a continuing lien against all non-exempt real property in the CFD, will be levied annually within the CFD, and collected in the same manner as ordinary ad valorem property taxes, or in such other manner as this Council or its designee shall determine, including direct billing of the affected property owners. The proposed rate and method of apportionment of the Special Tax among the parcels of real property within the CFD in sufficient detail to allow each landowner within the proposed CFD to estimate the maximum amount such owner will have to pay, are described in Exhibit C attached hereto and hereby incorporated herein. This Council hereby finds that the provisions of Section 53313.6, 53313.7 and 53313.9 of the Act (relating to adjustments to ad valorem property taxes and schools financed by a community facilities district) are inapplicable to the proposed CFD.

As required by Section 53339.3(d) of the Act, the Council hereby determines that the special tax proposed to pay for one or more Services to be supplied within the Future Annexation Area will be equal to the special taxes levied to pay for the same Services in the original area of the CFD, except that a higher or lower tax may be levied within the territory proposed to be annexed or to be annexed in the future to the extent that the actual cost of providing the services in that territory is higher or lower than the cost of providing those services in the existing district.

6. Exempt Property. Except as may otherwise be provided by law or by the rate and method of apportionment of the Special Tax for the CFD, all lands owned by any public entity, including the United States, the State of California and/or the City, or any departments or political subdivisions thereof, shall be omitted from the levy of the Special Tax to be made to cover the costs and expenses of the Services and the CFD. In the event that a portion of the property within the CFD shall become for any reason exempt, wholly or in part, from the levy of the Special Tax, this Council will, on behalf of the CFD, increase the levy to the extent necessary upon the remaining property within the CFD which is not exempt in order to yield the required debt service payments and other annual expenses of the CFD, if any, subject to the provisions of the rate and method of apportionment of the Special Tax.

7. Election and Unanimous Approval. The levy of the Special Tax shall be subject to the approval of the qualified electors of the CFD at a special election. The proposed voting procedure shall be by mailed or hand-delivered ballot among the landowners in the proposed CFD, with each owner having one vote for each acre or portion of an acre such owner owns in the CFD.

A special tax shall be levied in the Future Annexation Area only with the Unanimous Approval of the owner or owners of each parcel or parcels at the time that parcel or those parcels are annexed, without any requirement for further public hearings or additional proceedings.

8. CFD Report. The City's Finance Director (or deputy or designee thereof) as the officer having charge and control of the Services in and for the CFD, or the designee of such officer, is hereby directed to study said proposed Services and to make, or cause to be made, and file with the City Clerk a report in writing, (the "CFD Report"), which shall be a part of the record of the public hearing hereinafter specified and which report shall present the following:

(a) A description of the Services by type which will be required to adequately meet the needs of the CFD.

(b) An estimate of the fair and reasonable cost of the Services and incidental expenses in connection therewith, and all other related costs.

9. Public Hearing. Tuesday, January 22, 2013, at 5:30 p.m. or as soon as possible thereafter, in the City Hall, Council Chambers, 2729 Prospect Park Drive, Rancho Cordova, California, be, and the same are hereby appointed and fixed as the time and place when and where this Council, as legislative body for the CFD, will conduct a public hearing on the establishment of the CFD and the Future Annexation Area and consider and finally determine whether the public interest, convenience and necessity require the formation of the CFD, the Future Annexation Area and the levy of the Special Tax.

10. Notice of Hearing. The City Clerk is hereby directed to cause notice of the public hearing to be given by publication one time in a newspaper published in the area of the CFD and the Future Annexation Area. The publication shall be completed at least seven days before the date of the public hearing specified above. The City Clerk may also cause notice of the hearing to be given to each property owner within the CFD by first class mail, postage prepaid, to each such owner's addresses as it appears on the most recent tax records of Sacramento County or as otherwise known to the City Clerk to be correct. Such mailing shall be completed not less than fifteen days before the date of the public hearing. Each of the notices shall be substantially in the form specified in Section 53322 of the Act, with a form summarizing the provisions hereof hereby specifically approved.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the _____ day of _____, 2012 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

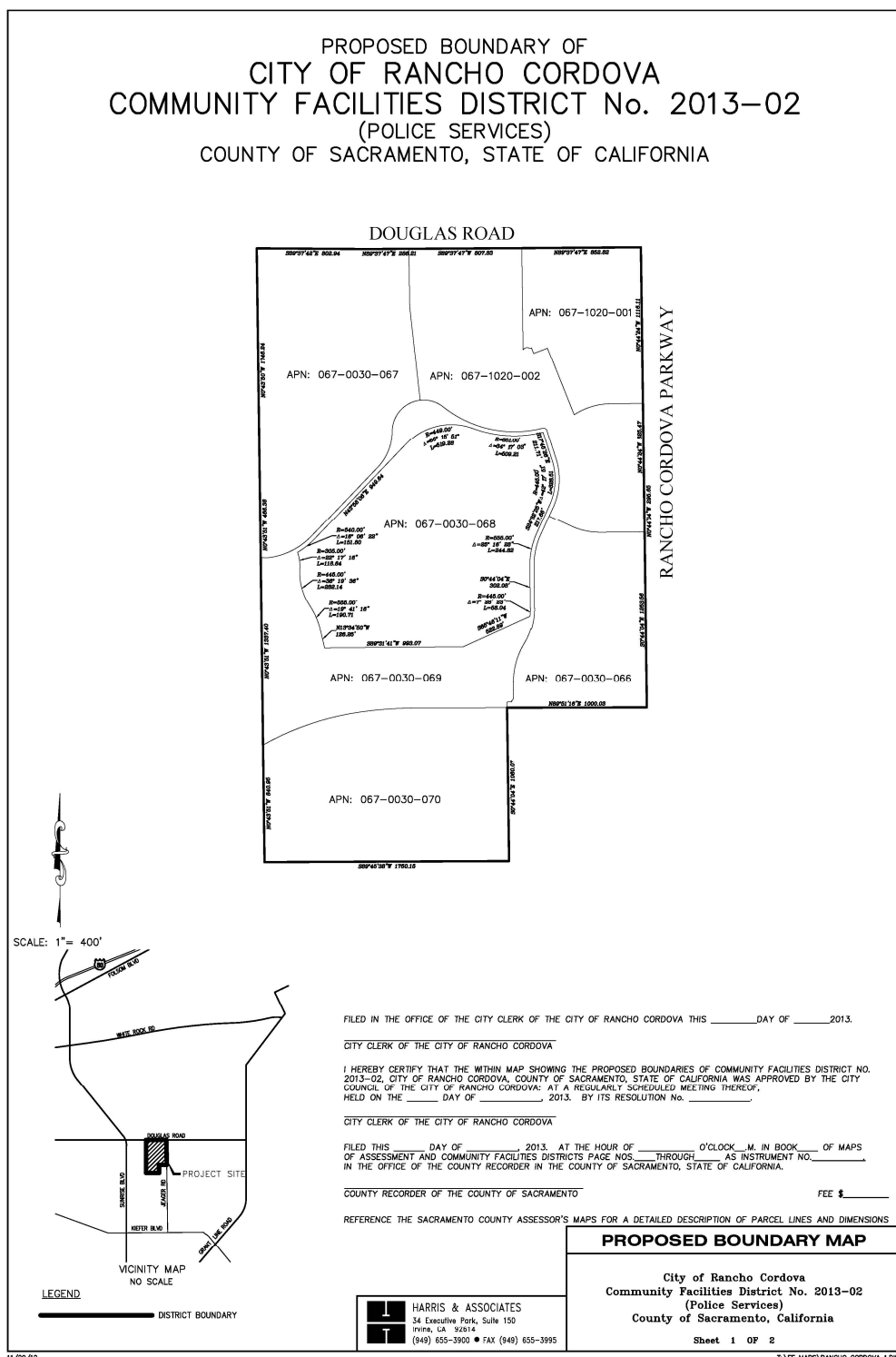
Linda Budge, Mayor

ATTEST:

Mindy Cuppy, CMC, City Clerk

EXHIBIT A

BOUNDARIES OF THE CFD AND FUTURE ANNEXATION AREA



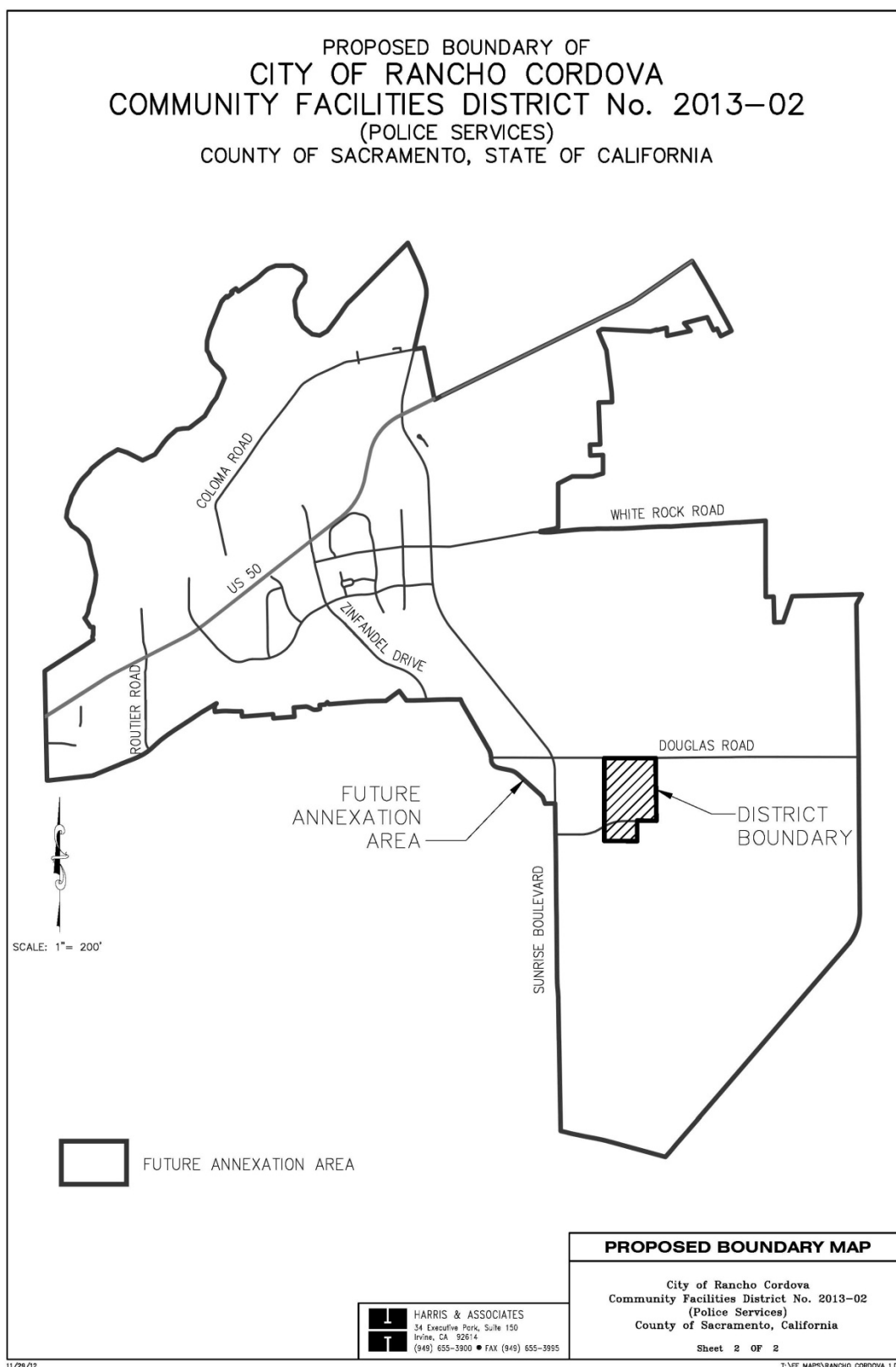


EXHIBIT B**CITY OF RANCHO CORDOVA
COMMUNITY FACILITIES DISTRICT NO. 2013-2
(POLICE SERVICES)****DESCRIPTION OF DISTRICT SERVICES**

Description of services:

Authorized Police Services

- Include (i) obtaining, furnishing, operating and maintaining police protection equipment or apparatus, (ii) paying the salaries and benefits of police protection personnel, and (iii) other such police protection service expenses as deemed necessary for the benefit of residents in the CFD.

EXHIBIT C**CITY OF RANCHO CORDOVA
COMMUNITY FACILITIES DISTRICT NO. 2013-2
(POLICE SERVICES)****RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX**

EXHIBIT C

CITY OF RANCHO CORDOVA COMMUNITY FACILITIES DISTRICT NO. 2013-2 (POLICE SERVICES)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

A Special Tax applicable to each Assessor's Parcel in the City of Rancho Cordova Community Facilities District No. 2013-2 (Police Services) shall be levied and collected according to the tax liability determined by the City Council acting in its capacity as the legislative body of CFD No. 2013-2, through the application of the appropriate Special Tax rate, as described below. All Residential Property in CFD No. 2013-2 shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to the CFD unless a separate or amended Rate and Method of Apportionment of Special Tax is adopted for the annexation area.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

“Accessory Unit” means a second residential unit of limited size (e.g., granny cottage, second unit) that shares a Parcel with a single-family detached unit.

“Acre or Acreage” means the number of acres of the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable Final Map or other parcel map recorded at the County Recorder's Office.

“Act” means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5 (commencing with Section 53311), Division 2, of Title 5 of the Government Code of the State of California.

“Administrative Expenses” means the direct and indirect costs incurred by the City to determine, levy and collect the Special Tax, including salaries of City employees and fees of consultants or other professionals and the direct and indirect costs of collecting the Special Taxes, preparation of required reports, and any other costs required to administer the CFD and enforce collection of the Special Taxes.

“Administrator” means the person or firm designated by the City to administer the Special Taxes according to this RMA.

“Airspace Parcel” means a Parcel of Taxable Property with an assigned Assessor's Parcel number that constitutes vertical space of another Parcel.

“Assessor’s Parcel” or **“Parcel”** means a lot or parcel shown in an Assessor’s Parcel Map with an assigned Assessor’s Parcel number or pending assignment of a number.

“Assessor’s Parcel Map” means an official map of the County Assessor designating parcels by Assessor’s Parcel number.

“Authorized Services” means the public services authorized to be funded by the CFD, which include (i) obtaining, furnishing, operating, and maintaining police protection equipment or apparatus, (ii) paying the salaries and benefits of police protection personnel, and (iii) other such police protection service expenses as deemed necessary for the benefit of residents in the CFD.

“CFD No. 2013-2” or **“CFD”** means the City of Rancho Cordova Community Facilities District No. 2013-2 (Police Services).

“CFD Formation” means the date on which the Resolution of Formation to form CFD No. 2013-2 was adopted by the City Council.

“City” means the City of Rancho Cordova.

“City Council” means the City Council of the City of Rancho Cordova, acting as the legislative body of CFD No. 2013-2.

“County” means the County of Sacramento.

“Fiscal Year” means the period starting on July 1 and ending on the following June 30.

“Maximum Special Tax” means the maximum Special Tax determined in accordance with Section C below that can be levied on Residential Property in any Fiscal Year.

“Proportionately” means that the ratio of the actual Special Tax levied to the Maximum Special Tax is equal for all Parcels of Residential Property.

“Public Property” means any property within the boundaries of CFD No. 2013-2 that is owned by the federal government, State of California, County, City, or other public agency.

“Residential Property” means, in any Fiscal Year, all Parcels in CFD No. 2013-2 for which a use permit or building permit for new construction of a structure consisting of one or more Residential Units (which shall not include a permit issued solely for construction of the foundation if another permit remains to be issued for vertical construction of the building) was issued prior to June 30 of the preceding year.

“Residential Unit” means an individual single-family detached unit, an individual residential unit within a duplex, halfplex, triplex, fourplex, townhome, live/work or condominium structure, or an individual apartment unit. A mobile home that is located on its own Assessor’s Parcel or is otherwise individually owned and not located on a rented space within a mobile home park shall also be categorized as a Residential Unit for purposes of the RMA. An Accessory Unit shall not

be considered a separate Residential Unit for calculation of the Maximum Special Tax for the Parcel.

“RMA” means this Rate and Method of Apportionment of Special Tax.

“Special Tax” means any tax levied within the CFD to pay the Special Tax Requirement.

“Special Tax Requirement” means the amount of revenue needed in any Fiscal Year to pay for the following: (i) Authorized Services, (ii) Administrative Expenses, and (iii) amounts needed to cure any delinquencies in the payment of Special Taxes levied in the immediately preceding Fiscal Year, or (based on delinquency rates in prior years) may be expected to occur in the Fiscal Year in which the tax will be collected, provided however, that if a prior Special Tax levy was increased to make up for reduced Special Tax proceeds due to a delinquency in the payment of Special Taxes in a prior Fiscal Year, no future levy shall again be increased as a result of that same year's delinquent Special Taxes, and if a prior Fiscal Year's Special Tax levy was increased because of an expected delinquency, no future levy shall again be increased because of that same delinquency, if and when the expected delinquency results in a corresponding actual delinquency.

“Taxable Property” means all Assessor's Parcels within the boundaries of CFD No. 2013-2 which are not exempt from the Special Tax pursuant to law or Section E below.

“Taxable Public Property” means, in any Fiscal Year, all Assessor's Parcels in CFD No. 2013-2 that had, in prior Fiscal Years, been taxed as Residential Property and subsequently came under the ownership of a public agency.

“Tax Zone” means a geographic area within which the Special Tax may be levied pursuant to this RMA. All of the property within CFD No. 2013-2 at the time of CFD Formation is within Tax Zone 1. Additional property may be annexed into Tax Zone 1 or additional Tax Zones may be created when property is annexed into the CFD, and a separate Maximum Special Tax shall be identified for property within the new Tax Zone at the time of such annexation. The Assessor's Parcels included within a new Tax Zone established when such Parcels are annexed to the CFD shall be identified by Assessor's Parcel Number in the Unanimous Approval Form that is signed by the owner(s) of the Parcels at the time of annexation.

“Unanimous Approval Form” means that form executed by the record owner of fee title to a Parcel or Parcels annexed into the CFD that constitutes the property owner's approval and unanimous vote in favor of annexing into the CFD and the levy of the Special Tax against his/her Parcel or Parcels pursuant to this RMA.

B. IDENTIFYING PARCELS FOR ANNUAL TAX LEVY

Each Fiscal Year, the Administrator shall identify the current Assessor's Parcel number for all Parcels of Residential Property within the CFD. The Administrator shall also determine (i) which Tax Zone each Assessor's Parcel is located in; (ii) the Special Tax Requirement for the then-current Fiscal Year; and (iii) the number of Residential Units built or to be built on each

Parcel of Residential Property by referencing the building permit, condominium plan, apartment plan, site plan or other development plan for the property.

In any Fiscal Year, if it is determined that (i) a parcel map for a portion of property in the CFD was recorded after January 1 of the prior Fiscal Year (or any other date after which the Assessor will not incorporate the newly-created parcels into the then current tax roll), (ii) because of the date the parcel map was recorded, the Assessor does not yet recognize the new parcels created by the parcel map, and (iii) one or more of the newly-created parcels meets the definition of Residential Property, the Administrator shall calculate the Special Tax for the property affected by recordation of the parcel map by determining the Special Tax that applies separately to each parcel of Residential Property, then applying the sum of the individual Special Taxes to the original Parcel that was subdivided by recordation of the parcel map.

C. MAXIMUM SPECIAL TAX

1. *Parcels of Residential Property*

The Maximum Special Tax for Residential Property within Tax Zone 1 of CFD No. 2013 shall be \$450 per Residential Unit for Fiscal Year 2011-12, which amount shall, on each July 1 commencing July 1, 2012, be escalated by the increase, if any, in the Local Consumer Price Index (CPI) for the San Francisco-Oakland-San Jose Area for All Urban Consumers. The CPI used shall be as determined by the Bureau of Labor Statistics from April to April beginning with the period from April 2011 to April 2012.

2. *Structures that Include Residential Units and Non-Residential Uses*

If a building permit is issued for a structure that will include Residential Units and non-residential square footage, the Administrator shall apply the following steps to determine the appropriate Maximum Special Tax for the Parcel(s):

- Step 1.** Determine how many Residential Units are included within the building and whether there is a separate Airspace Parcel created for each Residential Unit.
- Step 2a.** *If there are separate Airspace Parcels for each Residential Unit*, the Maximum Special Tax for each Airspace Parcel on which a Residential Unit has been or will be constructed shall be the Maximum Special Tax for Residential Property for the applicable Tax Zone.
- Step 2b.** *If there are not separate Airspace Parcels for each Residential Unit, the Maximum Special Tax for the Parcel on which the building is located shall be determined by* multiplying the Maximum Special Tax for Residential Property for the applicable Tax Zone by the number of Residential Units within the building.

D. METHOD OF LEVY AND COLLECTION OF SPECIAL TAX

Each Fiscal Year, the Special Tax shall be levied as follows until the amount of the levy equals the Special Tax Requirement for that Fiscal Year:

First: The special tax shall be levied Proportionately on each Parcel of Residential Property up to 100% of the Maximum Special Tax for Residential Property for such Fiscal Year;

Second: If additional revenue is needed after the first step has been completed, the Special Tax shall be levied proportionately on each Parcel of Taxable Public Property up to 100% of the Maximum Special Tax that would have applied to the Parcel had the Parcel not become Public Property until the amount levied is equal to the Special Tax Requirement for the Fiscal Year.

The Special Tax for CFD No. 2013-2 shall be collected at the same time and in the same manner as ordinary ad valorem property taxes provided, however, that the City may (under the authority of Government Code Section 53340) collect Special Taxes at a different time or in a different manner if necessary to meet CFD No. 2013-2 financial obligations, and the Special Tax shall be equally subject to foreclosure if delinquent.

E. LIMITATIONS

Notwithstanding any other provision of this RMA, no Special Tax shall be levied on (i) any Parcel of Public Property that is not Taxable Public Property, and (ii) any Parcel in CFD No. 2013-2 that is not Residential Property.

F. INTERPRETATION OF SPECIAL TAX FORMULA

The City reserves the right to make administrative, technical and clarification changes to this RMA that in its judgment do not materially affect the equitable rate and method of apportioning Special Taxes among Parcels, including reallocation of the Special Taxes among property in CFD No. 2013-2 as a result of the creation of new Parcels from existing Parcels and/or for the purpose of more reasonably allocating the Special Tax based upon the existing or future development or development potential of property in CFD 2013-2. In addition, the interpretation and application of any section of this RMA shall be left to the City's discretion; interpretations may be made by the City by ordinance or resolution for the purposes of clarifying any vagueness or ambiguity in this RMA and to conform to the original intent of the City to allocate the Special Taxes among properties benefiting from the services financed by the Special Taxes.

MEMORANDUM



DATE: December 17, 2012

TO: Mayor and Council Members

FROM: Cyrus Abhar, Public Works Director

SUBJECT: **ORDINANCE AMENDING CHAPTERS 6.20 AND 6.21 OF THE RANCHO CORDOVA MUNICIPAL CODE CONCERNING SOLID WASTE AND RECYCLING; AND RESOLUTION GRANTING THE PUBLIC WORKS DIRECTOR THE AUTHORITY TO NEGOTIATE AND EXECUTE NON-EXCLUSIVE COMMERCIAL FRANCHISE AGREEMENTS FOR SOLID WASTE COLLECTION**

RECOMMENDATION

1. Introduce and waive the first reading of Ordinance No. 22-2012.
2. Adopt Resolution No. 119-2012.

RESULT OF RECOMMENDED ACTION

Adoption of this Ordinance will repeal unnecessary Sacramento County Code provisions on solid waste from the City's Code, which were previously incorporated by reference, and will amend Rancho Cordova Municipal Code chapters 6.20 and 6.21 on solid waste and recycling. These changes will resolve conflicts between the Code and commercial franchise agreements for solid waste collection and reflect changes in State law concerning recycling. Adoption of this Resolution will give the Public Works Director the authority to negotiate and execute non-exclusive commercial solid waste and recycling collection agreements, and to grant the franchises, as allowed under the Municipal Code.

ADVANCES GOALS 1, 2, and 5.

BACKGROUND AND SUMMARY

Upon incorporation in 2003, the City Council adopted two ordinances (20-2003 and 21-2003) which incorporated numerous chapters of the Sacramento County Code ("SCC"), including SCC chapter 6.20 on solid waste. Subsequent ordinances adopted by the City Council established the City's own code provisions on solid waste and recycling (Rancho Cordova Municipal Code chapters 6.20 and 6.21). Staff recommends repeal of certain SCC provisions previously adopted by the City. This will ensure clarity and resolve conflicts between the City's code and the residential and commercial franchise agreements. Staff also recommends revisions of chapters 6.20 and 6.21 of the Rancho Cordova Municipal Code concerning solid waste and recycling.

The amendments to sections of chapters 6.20 and 6.21 include the deletion of numerous sections which are now included in, and more appropriately covered by, the commercial

franchise agreements. The franchise agreements now include additional insurance and indemnification provisions, and updated language pertaining to the State's new mandatory commercial recycling law (AB 341), which took effect July 1, 2012. The new law requires local businesses and multi-family residential properties (five units or more) that produce a minimum of four (4) cubic yards of solid waste per week to subscribe to recycling services.

The code amendments also clarify that the city council may authorize the Public Works Director to negotiate and execute the non-exclusive commercial solid waste and recycling collection franchise agreements. The City currently has ten (10) commercial franchise agreements. Approval of the Resolution allows the Public Works Director to negotiate and execute the commercial franchise agreements, which are set to expire December 31, 2012.

Additionally, a provision requiring mandatory solid waste service for residential and commercial properties located within the City has been added to the code. Finally, the code amendments add procedures for reviewing and granting an exclusive residential solid waste collection franchise consistent with current practice.

FISCAL IMPACT

Section 6 of the Commercial Solid Waste and Recyclables Collection Franchise Agreement requires franchisees to pay a ten percent (10%) franchise fee on gross revenues received for commercial solid waste collection services provided within the City. The 10 percent (10%) franchise fee generates revenue in the range of \$35,000 per month, or \$420,000 per year, paid by the franchisees to the City. The proposed Agreements will not affect the anticipated franchise fee revenue.

MOTIONS

1. "I move that the City Council introduce and waive the first reading of Ordinance No. 22-2012."
2. "I move that the City Council adopt Resolution No. 119-2012."

ATTACHMENTS

1. Courtesy copy of Chapter 6.20 showing amendments
2. Ordinance No. 22-2012
3. Resolution No. 119-2012, including Exhibit A – Commercial Franchise Agreement (amended)

ATTACHMENT 1

Courtesy copy of Chapter 6.20 of RCMC with amendments shown: Ordinance 22-2012 will repeal Chapter 6.20 and replace it with the amended version.

**Chapter 6.20
SOLID WASTE MANAGEMENT**

Sections:

<u>6.20.010</u>	Purpose and declarations.
<u>6.20.020</u>	Definitions.
<u>6.20.030</u>	Collection or transportation prohibited.
<u>6.20.035</u>	<u>Mandatory service</u>
<u>6.20.040</u>	<u>Public agency exemption</u>
<u>6.20.045</u>	<u>Administrator exemption</u>
<u>6.20.050</u>	Franchise requirement.
<u>6.20.055</u>	Exempt collection or transportation.
<u>6.20.060</u>	City council authority to grant franchise.
<u>6.20.070</u>	Franchise terms and conditions
<u>6.20.080</u>	Application for franchise.
<u>6.20.090</u>	<u>Commercial franchise application review process.</u>
<u>6.20.095</u>	<u>Residential franchise application review process.</u>
<u>6.20.100</u>	Appeal upon denial of award.
<u>6.20.110</u>	Awarding of franchise.
<u>6.20.120</u>	Requirements for franchise effectiveness.
<u>6.20.130</u>	Franchise fees.
<u>6.20.140</u>	Recycling facility reporting requirements.
<u>6.20.150</u>	Restrictions on franchisees.
<u>6.20.160</u>	Medical waste.
<u>6.20.170</u>	Enforcement.
<u>6.20.180</u>	Abatement proceedings.
<u>6.20.190</u>	Notices.
<u>6.20.200</u>	On-site storage.
<u>6.20.210</u>	Solid waste disposal restrictions.
<u>6.20.220</u>	Use of containers.
<u>6.20.230</u>	Rules and regulations.
<u>6.20.240</u>	<u>Vehicle inspection</u>
<u>6.20.250</u>	Vehicle requirements.
<u>6.20.260</u>	Covered load requirement.
<u>6.20.270</u>	Rights reserved to city.
<u>6.20.280</u>	<u>Other franchise provisions</u>
<u>6.20.290</u>	Criminal penalties for violations.
<u>6.20.300</u>	Civil penalties for violations.
<u>6.20.310</u>	Settlement process.

ATTACHMENT 1

- 6.20.320 Hearing officer.
- 6.20.330 Appeals.
- 6.20.340 Appeal hearing.

6.20.010 Purpose and declarations.

A. It is hereby declared and determined that the business of collecting and subsequently transporting, transferring, disposing and/or recycling of residential and commercial solid waste generated, kept or accumulated within the incorporated limits of the city of Rancho Cordova affects the health, safety, public welfare and quality of life of the inhabitants of the city. The city further declares that the business of collecting and disposing of residential and commercial solid waste is a public service and should be regulated by the city to ensure reliability and adequacy of service. The use of any public street or public property in connection with such business is of great concern to the city and should be regulated by the city. Therefore, it is the purpose of this chapter to provide such regulation.

The city further declares that residential collection service will be most efficient, and at a lower cost, when collection routes provide door-to-door service uninterrupted by competition in the same area; and that exclusive residential collection services allow for energy conservation in fuel consumed by collection equipment, for the reduction of traffic congestion on roads and streets, and for fewer adverse effects on public streets and rights-of-way due to less truck traffic.

B. It is the further purpose of this chapter to regulate such business in order to ensure its orderly operation and to minimize the adverse effects it may have on the local environment. It is also the purpose of this chapter, aside and apart from regulation, to require compensation for the value of the franchise issued by the city.

C. It is the further purpose of this chapter to provide for the uniform regulation of residential and commercial solid waste collection, removal and transportation within the geographical area of the city.

D. The city hereby elects to have the grant of franchises governed by this chapter, and any ordinances amendatory thereof, and these provisions shall constitute the exclusive procedure applicable to the granting of franchises for the conduct of the business of collecting, transporting or disposing of residential and commercial solid waste.

6.20.020 Definitions.

Unless the context otherwise requires, the definitions set forth in this section shall govern the interpretation of this chapter.

A. "Administrator" means the administrator of the city's solid waste program. The city council shall designate by resolution the administrator.

B. "City" means the city of Rancho Cordova.

ATTACHMENT 1

- C. "City council" means the city council of the city of Rancho Cordova.
- D. "City clerk" means the city clerk of the city of Rancho Cordova.
- E. "City engineer" means the engineer of the city of Rancho Cordova.
- F. "City limits" means the territorial jurisdiction of the city of Rancho Cordova.
- G. "Collection" means the act of ~~picking-up~~collecting and removing solid waste or recyclable material at the place of waste generation.
- H. "Commercial hauler" or ~~"hauler"~~ means any person who loads, collects, hauls, or transports commercial solid waste ~~that was generated by another person or its employees or subcontractors in the course of providing its principal service, or manufacturing or constructing or assembling its major product,~~ for a fee by use of any means, including, but not limited to, a dumpster truck, roll-off truck; a side-load, front-load, or rear-load garbage truck; or a trailer.
- I. "Commercial solid waste" means all solid waste, as defined in this chapter, ~~that is~~and generated by and at commercial and industrial sources, multifamily ~~residential property, dwelling units~~ and construction and demolition activities that is collected by a commercial hauler.
- J. "Franchise" or "Commercial franchise" means a commercial solid waste and recyclables collection franchise issued under the provisions of this chapter to a commercial hauler within the city.
- K. "Franchisee" means a person or entity holding a franchise issued pursuant to this chapter.
- L. "Materials recovery facility" or "MRF" means any facility designed, operated, and legally permitted for the purpose of receiving, sorting, processing, storing, or preparing recyclable materials for sale and which has obtained, and maintains valid permit(s) to accept, process or store recyclable materials, ~~a permitted solid waste facility where solid waste or recyclable materials are sorted, or separated, by hand or by use of machinery, for the purposes of recycling or composting.~~ This definition shall apply only within the framework of materials recovery facility services and reporting of this chapter.
- M. ~~"Multifamily dwelling units" means five or more residential dwelling units located on a single parcel of land.~~ "Multifamily residential property" means five or more individual living units located on a single parcel of land and any mobile home park located within the city.
- N. "Person" means an individual, firm, limited liability company, association, partnership, industry, public or private corporation, or any other entity whatsoever.
- O. "Police chief" means the chief of police of the city of Rancho Cordova.

ATTACHMENT 1

P. "Recycling" means the process of collecting, sorting, cleansing, treating and reconstituting materials that would otherwise become solid waste and returning them for use or reuse in the form of raw materials for new, used or reconstituted products which meet the quality standard necessary to be used in the marketplace. "Recycling" does not include transformation as defined in Public Resources Code Section 40201.

Q. "Recycling facilities" means those facilities or operations that receive, process, and transfer to market recyclable materials that have been source separated from the solid waste stream.

R. "Recyclable material" or "recyclables" means materials that have been separated from the solid waste stream prior to disposal for the purpose of returning them for use or reuse in the form of raw materials for new, used or reconstituted products which meet the quality standard necessary to be used in the marketplace, and that are not landfilled.

S. "Removal" means the act of taking solid wastes or recyclable materials from the place of ~~waste~~ generation.

T. "Residential dwelling unit" means an individual living unit in a single family dwelling, condominium, townhouse, mobile home, duplex (two units), triplex (three units), fourplex (four units) or building of four or less total individual living units intended for, or capable of being utilized for, residential living other than a hotel or motel.

U. "Residential hauler" means any person who loads, collects, hauls, or transports residential solid waste for a fee by use of any means, including, but not limited to, a dumpster truck; roll-off truck; a side-load, front-load, or rear-load garbage truck; or a trailer.

V. "Residential solid waste" means all solid waste, as defined in this chapter, that is generated by and at a residential dwelling unit.

W. "Residential franchise" means a residential solid waste collection franchise issued under the provisions of this chapter to a residential hauler within the city.

X. "Rubbish" means nonputrescible solid wastes such as ashes, paper, cardboard, tin cans, yard waste, wood, glass, bedding, crockery, plastics, rubber by-products and litter.

Y. "Solid waste" means all putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, construction and demolition debris, discarded home and industrial appliances, dewatered, treated or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semi-solid wastes, and other discarded solid and semi-solid wastes. Solid waste does not include hazardous waste or low-level radioactive waste regulated under Chapter 7.6 (commencing with Section 25800) of Division 20 of the Health and Safety Code, or medical

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waste. Solid waste does not include recyclable materials set out for separate collection for the purposes of recycling, and that are not landfilled.

Z. "Source separate" or "source separated" ~~means the process of removing recyclable materials from solid waste for the purpose of recycling means the keeping of recyclable materials independently containerized or clearly segregated from solid waste at the point of generation for the purpose of reuse or recycling and preventing them from being contaminated by solid waste.~~

AA. "Treated medical waste" means medical waste as defined in subsection (a) of Health and Safety Code Section 25023.5.

BB. "Construction and Demolition Debris" means used or discarded materials resulting from construction, renovation, remodeling, repair or demolition operations on any pavement, house, commercial building, or other structure and such other materials as may be removed during the normal cleanup process of such construction, renovation, remodeling, repair, or demolition operations. This includes mixed construction and demolition debris and source separated recyclable construction and demolition material.

6.20.030 Collection or transportation prohibited.

Except as authorized by RCMC 6.20.040 and 6.20.050, it shall be unlawful for any person to engage in the business of collecting, removing or transporting residential or commercial solid waste, or otherwise organizing, directing, sponsoring, brokering or causing the collection, removal or transportation of commercial residential or solid waste within the city without possessing a valid franchise or valid residential franchise granted by the city.

6.20.035 Mandatory Service.

~~Except as otherwise expressly provided by this Chapter, the owner, tenant, or occupant of every improved parcel (parcel with one or more business and/or residential buildings approved for occupancy) located within the city shall subscribe to a solid waste and recyclables collection service from a residential or commercial franchisee operating pursuant to this Chapter. Each business (DBA) and/or residential building with a separate address and each separate business unit and each separate residential unit (under separate rental agreement) with a common address located on such parcel shall subscribe to such service. The owner, tenant or occupant of a parcel with a residential dwelling unit shall subscribe to a collection service from a residential franchisee operating according to this chapter. The owner, tenant, or occupant of a parcel with a commercial or multifamily property shall subscribe to a collection service from a commercial franchisee operating according to this chapter.~~

~~Any parcel owner of an improved five-acre or larger parcel may submit a written request for an exemption from mandatory service to the administrator, who will consider such requests on a case by case basis. The administrator will submit a written response within 30 days of receipt of a written request either approving or denying the exemption from mandatory service.~~

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6.20.040 Public Agency Exemption.

The provisions of Section 6.20.035 shall not be applicable to the United States, the State of California, the County, a city, a special district or any other local public agency with respect to the accumulation, collection or transportation of refuse resulting from operations of such agency.

6.20.045 Administrator Exemption.

The administrator shall, upon application, grant a written exemption from the mandatory collection service requirements established by Section 6.20.035 for any property utilized for commercial purposes which does not generate solid waste, and may grant such an exemption for any residential dwelling unit (but not multi-family residential properties dwelling units) if it determines that the occupant has made adequate and appropriate arrangements for the disposal of solid waste and required subscription to collection service would constitute an unreasonable hardship or impractical burden.

6.20.050 Franchise requirement.

It is unlawful for any person to engage in the business of collecting, transporting or disposing of residential or commercial solid waste kept, accumulated or generated in the city, or to engage in the business of soliciting accounts or invoicing customers for residential or commercial solid waste service in the city unless:

- A. A franchise or residential franchise therefor has first been granted pursuant to the provisions of this chapter and such franchise is in full force and effect and a written franchise agreement therefor has been executed between such person and the city and such agreement is in full force and effect; or
- B. The residential or commercial solid waste is generated and hauled by the same person.

6.20.055 Exempt collection or transportation.

The following persons shall be authorized to organize, direct or sponsor the collection, removal or transportation of residential or commercial solid waste within the city, or collect, remove or transport such solid waste, without a franchise or a residential franchise:

- A. The United States, the state of California, a city, a special district or other local public agency, or any employee or member of the Armed Forces thereof, or any individual or employee of such individual who has entered into a contract for solid waste collection with a federal or state agency, when collecting or transporting solid waste produced by operation of the public entity under a system of solid waste collection and transportation operated and maintained by the public agency;
- B. The owner, operator or occupant or employee of a farm or ranch consisting of five acres or more, when transporting for off-site disposal solid waste accumulated as a result of operation of the farm or ranch;

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C. An owner or occupant of a residential ~~or multifamily dwelling~~residential property, when collecting or transporting rubbish, not containing garbage, from his or her residential premises to a lawful point of disposal;

D. A residential construction contractor, commercial or residential gardener and those engaged in the business of cleaning residential and commercial properties and employees thereof, when collecting or transporting rubbish consisting of by-products of the services provided to a lawful disposal location;

E. A person or employee thereof, when collecting or transporting dead animals, bones, meat scraps or food waste resulting from food processing plants for tallow or fertilizer, or other waste material to be used as raw material in manufacturing, or solid waste that is collected without charging a fee to the customer for purposes of salvage; provided, that such persons shall reuse or recycle or cause to be reused or recycled all materials collected, and shall not transport or arrange for the transport of any collected materials to a disposal site;

F. An operator or employee thereof of one or more industrial plants which are under single ownership, when collecting or transporting wastes which cannot be handled by standard solid waste collection equipment or which involve significant health, operating or handling hazards, including but not limited to rice hulls, tomato pulp, chemical residues, explosives, and other toxic, noxious or hazardous substances; provided, that all such wastes shall be deposited at an appropriate disposal area permitted pursuant to California State Solid or Hazardous Waste Management Standards.

Any transportation of solid waste, refuse or rubbish authorized by this section shall be conducted in strict compliance with any and all requirements of this chapter relating to transportation and any regulations issued hereunder

G. Any person collecting or transporting hazardous waste, medical waste and designated waste, as defined in law, regardless of its source;

H. Any person collecting or transporting by-products of sewage treatment, including sludge, sludge ash, grit, and screenings;

I. Any person collecting or transporting residue or non-processable waste from a solid waste management facility, including material recovery, composting, and transformation facilities; and

J. Municipal corporations and other governmental agencies using their own vehicles engaged in the collection, transportation, or disposal of solid waste within the city.

6.20.060 City council authority to grant franchise.

A. The city council may and is hereby empowered to grant to a qualified applicant a nonexclusive franchise to engage in the business of collecting, transporting or disposing of

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commercial solid waste and designated recyclable materials kept, accumulated or generated in the city, or to delegate the authority, by resolution, to the administrator to grant the franchise.

B. The city council may and is hereby empowered to grant to a qualified applicant an exclusive residential franchise to engage in the business of collecting, transporting or disposing of residential solid waste and recyclable materials kept, accumulated or generated in the city, or to delegate the authority, by resolution, to the administrator to grant the franchise, according to the procedures set forth in Sections 6.20.080 and 6.20.095 of this chapter.

C. The city council may grant a commercial franchise or a residential franchise to an applicant based on compliance with this chapter. Any grant of a commercial franchise or a residential franchise by the city council may be subject to such terms, conditions, rules, regulations, restrictions, and limitations as the city council deems necessary to protect the public health, safety, or welfare.

D. The city council hereby empowers and grants to the administrator the authority to administer and negotiate nonsubstantive changes to the commercial franchise and residential franchise agreements. The city council may delegate authority by resolution to the administrator to administer, negotiate and execute franchise agreements.

6.20.070 Franchise terms and conditions.

A. All franchises and residential franchises shall be subject to the terms and conditions specified in this chapter, in the franchise agreement and in all other applicable federal, state and local laws and regulations.

B. In granting any franchise or residential franchise, the city council may prescribe such other additional terms and conditions, not in conflict with this chapter, as in the judgment of the city council are in the public interest.

C. Each franchisee shall provide residential or commercial solid waste collection, removal, recycling, and transportation services consistent with the provisions of this chapter, the terms and conditions of the franchise issued to the franchisee, and any applicable federal, state, or local statute, ordinance, rule or regulation.

D. Each franchisee shall provide services without undue interruptions caused by mechanical failures or other inadequacies of equipment and shall utilize equipment in quantities and of an age and quality adequate for the provisions of reliable service and to provide preventive and repair maintenance of such equipment sufficient to ensure reliability.

6.20.080 Application for commercial or residential franchise.

A. All applications for commercial or residential franchises pursuant to this chapter shall be in writing and shall be filed with the administrator.

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B. Each application for a commercial or residential franchise from a company that has never held a commercial or residential franchise in the city shall be submitted by the applicant on a form provided by the administrator. The application shall include all attachments required by the administrator. At a minimum, the application shall contain the following information:

1. Identification.

- a. The name and address of the applicant.
- b. Business address and telephone number of the applicant.
- c. Address where all vehicles and operating equipment used within the city will be kept.
- d. If the applicant is a partnership, the applicant shall include the name and address of each partner, general, limited or otherwise, owning more than 10 percent ownership in the partnership and their percentage of ownership.
- e. If the applicant is a corporation, the application shall state the names and addresses of the corporation's directors, date and place of incorporation, main offices, major stockholders and associates, and the names and addresses of the parent and subsidiary companies.
- f. If the applicant is an affiliate or a franchised operation of another corporation (not to be confused in this instance with a solid waste franchisee of the city), the applicant shall list the names and addresses of the parent or subsidiary companies, together with a description of their business interests and/or ownership.
- g. If the applicant is a joint venture or other combination of persons and corporations, identify separately the names and addresses of each member of the joint venture or combined effort, together with their percentage interest.

2. Business Operations. The names of the executive, operational and financial managers to be used in connection with the solid waste collection services, together with documentation that such persons and the applicant have sufficient experience in solid waste handling to perform solid waste collection services in the city.

- a. Attestation that books and accounts of all revenue and income arising out of its operations will be kept in a manner that conforms to generally accepted accounting principles.
- b. A statement that the applicant shall obtain insurance prior to commencing business subject to the franchise agreement.

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c. A statement that the applicant shall maintain and report on a timely basis all operational information and data elements reasonably required by the city to comply with its reporting requirements such as those established under AB 939, and as defined in the franchise agreement.

d. A complete listing and explanation of any civil or criminal rulings or judgments in excess of \$5,000, or convictions against applicant, any of applicant's partners, major stockholders, corporate directors or parent or subsidiary companies, occurring within the last five years. Applicants that are subject to the periodic reporting requirements of Section 13(a) of the Securities Exchange Act may, in lieu of the information required by this subsection, submit the information reported pursuant to 17 CFR 229.103 (Legal proceedings) and 229.403 (Security ownership of certain beneficial owners and management) on the most recent form 10-K filed by the applicant with the Securities and Exchange Commission.

3. Facilities and Equipment.

a. A description of all vehicles and equipment that the applicant owns, has control of, or intends to acquire for the collection, transportation, or disposal of commercial waste in the city and which are subject to the provisions of the franchise agreement. A statement as to whether said vehicles and equipment are self-unloading and equipped with audible automatic back-up warning devices. The minimum vehicle description for existing vehicles shall include Vehicle Identification Number (VIN) and license plate number.

b. Evidence demonstrating that the applicant owns or will have access to suitable facilities for keeping vehicles and equipment clean and in good repair, and that the applicant owns or will have access to reasonable office and billing facilities.

c. Evidence demonstrating that the applicant owns or will have the legally enforceable right to use at least two collection vehicles, the bodies of which are closed, leak-resistant, and constructed for the purpose of solid waste collection, transportation, and disposal. In the alternative, for the purposes of this provision, an applicant may demonstrate by the evidence that they service and transport open-top roll-off boxes for the collection, transportation, and disposal of nonputrescible waste and/or roll-off compaction boxes which are closed, leak-resistant, and are constructed for the purpose of solid waste collection, transportation, and disposal.

4. Financial Resources. Applicant shall provide proof satisfactory to the administrator that the applicant has adequate financial resources to conduct commercial solid waste collection services.

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5. Diversion Plans. Each franchisee shall submit a diversion plan with their franchise application. The diversion plan shall provide a detailed description of how the franchisee intends to divert recyclable materials from commercial solid waste in order to assist the city in meeting the city's AB 939 reporting requirements.

6. Application for Police Chief Review.

a. The city may request that the police chief review each franchise application prior to the city issuing a franchise. The administrator may refer all franchise applications or renewals pursuant to this chapter to the police chief who, in conjunction with city staff, shall make such investigation of the applicant as the police chief deems necessary in order to determine whether the applicant's character or the business responsibility of the firm the applicant represents is satisfactory. The requirements of this section apply to all pending or future applications or proposals for issuance or renewal of such franchise pursuant to this chapter. The police chief's investigation may include, but is not limited to, obtaining the fingerprints and a photograph of the applicant, or any other person connected with the firm which the applicant represents, and the obtaining of reports from the state and federal law enforcement agencies and reports from any other appropriate sources.

b. If requested to review an application, the police chief shall evaluate each franchise application or proposal to determine whether the operation of the business which the applicant or party submitting the proposal represents would involve an unreasonable risk to the health, safety or general welfare of the public. In making such a determination, the police chief shall consider the character of the applicant or party submitting the proposal and each director, officer, manager and other person who exercises policy control over the operations of the applicant or proponent, the business responsibility of the firm which the applicant or party submitting the proposal represents, and the manner in which the firm intends to conduct its business.

c. The police chief shall notify the administrator of the results of the investigation conducted pursuant to this section. If the police chief recommends disapproval of the application or proposal, the reasons for disapproval shall be specified in writing. The police chief shall forward a copy of the statement of reasons to the administrator and shall provide a copy to the applicant or party submitting the application.

7. Other.

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- a. Any other evidence that demonstrates that the applicant is able to render collection and subsequent transportation, and/or disposal services in accordance with applicable federal, state and local statutes.
- b. Such additional information as may be reasonably requested by the administrator.
- c. During the application or proposal period and during the full term of any franchise, all information contained in the franchise application shall be kept up to date by the applicant who shall file a new verified statement within 48 hours of any change indicating in detail the nature of any change in the information.

C. Each application for a commercial or residential franchise from a company holding a valid, current commercial or residential franchise which is set to expire shall be submitted by the applicant on a form provided by the administrator. The application shall include all attachments required by the administrator.

D. The application shall be signed by the person applying for the commercial or residential solid waste and recyclables collection franchise or, in the case of a partnership or corporation, by a person authorized to bind the partnership or corporation.

6.20.090 Commercial franchise application review process.

- A. The city council may award franchises for the collection of commercial solid waste within the city to applicants meeting all of the qualifications of this chapter.
- B. Applicants may submit their completed application for a commercial franchise, as provided in RCMC 6.20.080, to the administrator for review and consideration at any time. The administrator shall review such submittals and either make a recommendation to the city council to award such franchise or notify applicant of denial within 60 days of receiving a completed application.
- C. The administrator shall take into consideration all components of the completed application, including but not limited to:
 - 1. The ability of the applicant to meet all terms of the agreement;
 - 2. Any history of civil or criminal convictions that may compromise the public's interests; and
 - 3. The completeness, accuracy, and validity of the application.

The administrator shall also have the authority to verify independently any and all statements made and implied in the application. The administrator may also request clarification from applicant of any or all elements of the submitted application.

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D. After the 60-day review period, the administrator shall either:

1. Deny an award and notify the applicant in writing of the reasons why the award was denied; or
2. Recommend to the city council that a franchise be awarded.

E. Upon concurrence with a positive recommendation, the city council will award the franchise or will delegate authority to the administrator to award the franchise within a reasonable period of time. The administrator will notify applicant in writing of an award.

6.20.095 Residential franchise application review process.

A. The city council may award an exclusive franchise for the collection of residential solid waste and recyclables within the city to an applicant meeting all of the qualifications of this chapter.

B. Applicants may submit their completed application for a residential franchise, as provided in RCMC 6.20.080, to the administrator for review and consideration when the CITY has noticed its desire to receive such applications and according to the deadlines set forth by such notice. The administrator shall review applications and either make a recommendation to the city council to award such franchise or notify applicant of denial within 60 days of receiving a completed application.

C. The administrator shall take into consideration all components of the completed application, including but not limited to:

1. The ability of the applicant to meet all terms of the agreement;
2. Any history of civil or criminal convictions that may compromise the public's interests;
and
3. The completeness, accuracy, and validity of the application.
4. The applicant's ability to provide the most efficient and cost effective collection service to CITY residents while minimizing the adverse effects of such service on the residents, CITY streets and rights-of-way, and the environment.

The administrator shall also have the authority to verify independently any and all statements made and implied in the application. The administrator may also request clarification from applicant of any or all elements of the submitted application.

D. After the 60-day review period, the administrator shall either:

1. Deny an award and notify the applicant in writing of the reasons why the award was denied; or

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2. Recommend to the city council that a franchise be awarded to a particular applicant;
or

3. Recommend to the city council a group of finalists from which the city council may select an applicant to award an exclusive franchise to.

E. Upon concurrence with a positive recommendation, the city council will award the franchise or will delegate authority to the administrator to award the franchise within a reasonable period of time. The administrator will notify applicant in writing of an award.

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6.20.100 Appeal upon denial of award.

A. Within 30 days of written notification of award denial or within 60 days of the administrator's failure to act on the commercial or residential franchise application, the applicant has the right to meet with the administrator to review the items cited in the written notice and provide any additional evidence to support an award. Within 15 days of such meeting, the administrator will make a final, written determination of the application, based on the reviews of additional evidence, together with the original application. Administrator will send a copy of all final, written determinations, including reasons for denial, if any, to both applicant and the city council.

B. Applicant may, within 10 days after receiving the administrator's final denial, request a public hearing before the city council by submitting to the city clerk a written petition for an appeal hearing. If a public hearing is requested, the city clerk shall set the matter for hearing at the next regularly scheduled city council meeting or any later date as agreed upon by the applicant and clerk of the city council. At such hearing, applicant may present evidence in writing and through testimony of its employees and others relevant to the application. During such hearing, the city council may demand from the applicant such additional information as the city council may deem relevant and necessary. Standard rules of evidence are not in effect at such public hearing, and the applicant shall have the burden of proof to show facts demonstrating that the applicant does in fact meet the requirements of this chapter. Any hearing may be continued or adjourned to a stated time and place without the giving of further notice. The city council will provide applicant with a written explanation of its determination on the application within 30 days of such hearing. The city council's decision is final.

C. If the term of an applicant's existing franchise expires while the application is under city review, the city council or the administrator may administratively extend the term for such period of time as is required to complete the appeal process.

6.20.110 Awarding of franchise.

A. A commercial or residential franchise shall become effective only once the applicant and the city have signed a written agreement, and upon applicant's satisfying all of the requirements and conditions set forth in both this chapter and the franchise agreement.

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B. The franchisee must provide to the city copies of all required certificates of insurance, and bonds and copies of all required truck inspection forms as may be enumerated in the franchise agreement and this chapter. Should franchisee fail to maintain all such insurance and bonding requirements, uninterrupted for the term of the agreement, the city will immediately suspend or terminate the commercial or residential franchise.

C. If the franchisee's description of vehicles and equipment, as required under RCMC 6.20.080, has changed between the application date and the effective date of the franchise agreement, franchisee must submit to administrator an amended description, including all identification elements required under RCMC 6.20.080, prior to commencing services authorized in the agreement.

6.20.120 Requirements for franchise effectiveness.

A franchise granted pursuant to this chapter shall not become effective unless and until all of the following requirements have been satisfied:

A. The ordinance granting the residential or commercial franchise, or the resolution granting the administrator the authority to grant the franchise, is effective.

B. The applicant and the city have executed a franchise agreement.

C. Within 20 days from the date of adoption of the ordinance granting the commercial or residential franchise, or within 20 days of the date of adoption of the resolution delegating authority to the administrator to grant the franchise, the applicant to whom a franchise has been granted has filed with the city clerk evidence of compliance with the insurance requirements specified in the franchise agreement.

6.20.130 Termination or suspension of franchise.

~~A. All franchises granted pursuant to this chapter shall terminate on December 31, 2015. The franchise may be terminated for cause prior to that date. The city and the franchisee may also enter into an agreement to terminate the franchise prior to that date.~~

~~B. The city council shall have the right to terminate any franchise granted pursuant to this chapter if the city council finds, after a public hearing following not less than 14 days' written notice to the franchisee, that:~~

~~1. The grantee has failed to comply with, or to do anything required of the grantee by, applicable provisions of this chapter, provisions of the ordinance granting the franchise, or provisions of the franchise agreement; or~~

~~2. Any provision of this chapter becomes or is declared to be invalid and the city council expressly finds that such provision constitutes a material consideration to the grant or continuation of such franchise.~~

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~~C. Any franchise granted pursuant to this chapter shall automatically be suspended whenever the franchisee:~~

- ~~1. Fails to keep in full force and effect the insurance required by the franchise agreement; or~~
- ~~2. Fails to keep in full force and effect any applicable licenses or permits required by federal, state or local law. The suspension shall remain in effect until the franchisee provides documentation satisfactory to the administrator verifying that the reason for the suspension specified above no longer exists.~~

~~D. The administrator may suspend any franchise granted under this chapter if the franchisee fails to submit timely reports as described in RCMC 6.20.170 within 15 days after written notice from the administrator that a report is delinquent. The suspension shall remain in effect for the period specified in the administrator's notice unless the suspension is reversed or modified by the administrator or, upon appeal by the franchisee, by the city council.~~

~~E. In the event the franchise granted pursuant to this chapter is terminated, the franchisee shall have no right or authority to engage in commercial solid waste collection, transportation or disposal operations in the city unless and until a subsequent commercial solid waste collection franchise is granted to the franchisee. Nothing herein shall require the city to grant any subsequent franchise to the franchisee.~~

~~F. In the event the franchise granted pursuant to this part is suspended, the franchisee shall have no right or authority to engage in commercial solid waste collection, transportation or disposal operations in the city during the period of suspension.~~

~~G. In the event any franchise granted pursuant to this chapter is terminated under subsection (A) of this section, then within the time period specified by the city council the franchisee shall:~~

- ~~1. Remove all of the franchisee's, and any subcontractor's, solid waste containers from all service locations where services have been provided pursuant to such franchise; and~~
- ~~2. Properly dispose of any and all solid wastes in the containers at the time of removal.~~

~~H. If the franchisee fails to remove any solid waste container or to properly dispose of any solid waste in any container within the time specified in subsection (G) of this section, the city may remove the container and/or dispose of the solid waste therein and may charge the franchisee for the city's costs. The franchisee shall pay to the city all of the costs incurred by the city in such removal and/or disposal within 10 days of the date of the city's invoice for such costs. [Ord. 23-2009 § B(13)].~~

6.20.140 Franchise transfer or assignment.

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Any franchise granted pursuant to this chapter is a privilege to be held in trust by the original franchisee. A franchisee shall not sell, lease, transfer, assign or otherwise dispose of, either in whole or in part, whether by forced sale, merger, consolidation, bankruptcy, reorganization under bankruptcy laws or otherwise, a franchise issued pursuant to this chapter without the prior consent of the city council. Any such consent of the city council shall be subject to such terms and conditions as may be prescribed by the city council. This restriction includes the transfer of ownership of the franchise, or a majority of the ownership or control of the franchisee, or the conveyance of a majority of the franchisee's stock to a new controlling interest. Franchises shall become void upon the abandonment of same by franchisee. [Ord. 23-2009 § B(14)].

6.20.130 Franchise fees.

~~A. Each person engaging in the business of collecting, transporting or disposing of commercial solid waste kept, accumulated or generated in the city shall pay a franchise fee to the city. The city council shall set the franchise fee by resolution.~~

A. Each person engaging in the business of collecting, transporting or disposing of commercial or residential solid waste and recyclables kept, accumulated or generated in CITY shall pay a franchise fee to CITY. The city council shall set the franchise fee by resolution, or shall delegate the authority to set the franchise fee to the City Manager by resolution.

~~B. Franchise fees shall be payable on a monthly basis, and shall be due and payable on the first day of the second month immediately following the month in which collection services were provided. Each payment shall be calculated in accordance with the provisions of this chapter.~~

~~C. The required franchise fee shall be paid to the administrator. Each payment shall be accompanied by a written statement, verified by the person making the payment, or a duly authorized representative of the person, showing the calculation of the franchise fee payable in such form and detail as the administrator may require and such other information as the administrator may determine is material to a determination of the amount due.~~

~~D. No statement filed under this section shall be conclusive as to the matters set forth in such statement, nor shall the filing of such statement preclude the city from collecting by appropriate action the sum that is actually due and payable.~~

B. The payment of franchise fees to the city pursuant to this section shall be in addition to any license fee or business tax prescribed by any local jurisdictions for the same period.

~~F. If franchise fees are not paid by the franchisee at the times required by this section, then in addition to the franchise fees the franchisee shall pay a late payment charge in an amount equal to two percent of the franchise fee that is due plus interest equal to one and one-half percent for each month in which the franchise fee was not timely paid.~~

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~~G. Commercial solid waste franchise fees shall be payable on all gross collection revenues collected by a franchisee from its commercial solid waste collection customers located within the city. The franchise fee shall be calculated based on gross collection revenues prior to franchisee imposing the franchise fee on its customers. Franchisees shall also pay franchise fees on revenues received from federal and state governments.~~

C. Commercial and residential solid waste franchise fees shall be payable on all gross collection revenues by a franchisee from its commercial or residential solid waste collection customers located within CITY. The franchise fee shall be calculated based on gross collection revenues prior to franchisee imposing the franchise fee on its customers. Non-exclusive franchisees shall also pay franchise fees on revenues received from federal and state government entities within CITY.

D. Franchise fees shall be payable by any person providing commercial or residential solid waste services within the city after the effective date of the ordinance codified in this chapter, even where no franchise has been granted.

6.20.160 Franchise operations.

~~A. All new customer agreements executed after the effective date of the franchise must contain clauses that automatically terminate such customer agreements in the event that the franchise or franchise agreement is terminated. Upon termination of any franchise, franchisee is required to notify all its customers in writing with 30 days of such termination.~~

~~B. Franchisee must offer recycling services to each of its customers or provide its customers with a list of companies who provide recycling services in the area.~~

~~C. The agreement shall provide for the requirements relating to the frequency and hours of collection, the size, placement and care of the containers, and special collections. [Ord. 23-2009 § B(16)].~~

6.20.170 Reporting requirements.

~~A. The franchisee shall file with the administrator a quarterly report of the quantities of commercial solid waste collected, transported, diverted, and/or disposed. Such report shall be in such form and detail as required by the administrator. Specifically, the report shall contain the following information:~~

- ~~1. The commercial solid waste tonnage collected and removed within the city during the previous quarter;~~
- ~~2. The commercial solid waste tonnage collected and removed during the previous quarter within the city that was diverted and the location of the facility where such solid waste was diverted from landfill disposal; and~~

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~~3. The commercial solid waste tonnage collected and removed within the city that was disposed of during the previous quarter and the location of the disposal facility where the disposal of such waste occurred.~~

~~B. Franchisees may use information supplied by certified MRFs to meet the requirements of this section.~~

~~C. All franchisees shall maintain quarterly records, on forms prescribed by the administrator, containing such information as may be required pertaining to the number and types of accounts served by the franchisee. This information shall be provided to the administrator upon request.~~

~~D. A franchisee's failure to file the reports required by this section shall constitute cause for termination or suspension of its franchise pursuant to RCMC 6.20.130.~~

~~E. To the extent permitted by the California Public Records Act, any reports, plans, and information required by this chapter or the franchise agreement shall be deemed confidential and shall not be subject to public disclosure except for each franchisee's aggregate totals.~~

~~F. If the quarterly report required under subsection (A) of this section is not filed by the due date specified in the franchise agreement, the report shall be deemed delinquent, and the franchisee shall pay to the city a delinquent report charge in the amount of \$50.00. If the report remains delinquent for more than 15 days, the franchisee shall pay to the city a delinquent report charge in the amount of \$100.00. Such delinquent report charge shall be in addition to any franchise fees or other charges payable by the franchisee for the same period of time.~~

6.20.140 Recycling facility reporting requirements.

A. All recycling facilities within the city shall provide semi-annual written reports to the administrator, due 45 days after the close of the six-month reporting period, and including the following information for the previous six months:

1. The total aggregate tonnage of recyclable material received from generators located within the city;
2. The aggregate tonnage of recyclable material received from waste management and recycling operations in the city;
3. The aggregate tonnage of recyclable material received from franchises operating within the city; and
4. The total aggregate amount of residuals generated at the facility and disposed of at a permitted solid waste disposal facility, expressed as a percentage of total tonnage received.

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B. To the extent permitted by the California Public Records Act, any report or other information required by this chapter shall be deemed confidential and shall not be subject to public disclosure except for aggregate totals for all facilities.

C. Recycling facilities receiving only scrap metals, agricultural waste, inert materials, and/or discarded, whitecoated, major appliances that are not normally disposed of and thus cannot be counted towards the state's diversion requirements are exempt from the reporting requirements of this chapter.

6.20.150 Restrictions on franchisees.

The following restrictions shall be applicable to franchisees:

A. Except to meet the two-truck requirement of RCMC [6.20.080](#)(B)(3)(c), no franchisee shall, by contract, subcontract, or otherwise, share with another franchisee any office space associated with operations under a franchise.

B. No franchisee, by contract, express understanding or indirectly, shall, in cooperation with another franchisee, divide, segregate or apportion any territory within the city for the purpose of restricting competition within a particular territory.

C. No franchisee shall, directly or indirectly, enter into any contract, express understanding or other transaction with another franchisee for the purpose of fixing customer rates or charges or otherwise maintaining rates or charges at a particular level.

D. No franchisee or any director, officer, partner, joint venturer, sole proprietor or corporate owner thereof, shall be a controlling shareholder of, be a partner, joint venturer or sole proprietor, owner, have any other interest in or be employed by another franchisee. No franchisee which is owned in whole or in part by a corporation shall be effectively controlled by a person or entity by virtue of that person or entity's ownership of shares in the corporation, if the same person or entity otherwise controls another franchisee. The sole remedy for violation of the provisions of this subsection shall be revocation or refusal to renew a franchise.

E. Each franchisee shall provide to the administrator such information as the administrator determines is reasonably necessary to facilitate effective administration of the franchise under the provisions of this chapter. Diversion information may be provided consistent with the framework for materials recovery facility (MRF) services and reporting of RCMC [6.20.170](#).

F. Notwithstanding any other provisions of this chapter, it shall be allowable for a franchisee having an interest in a materials recovery facility (MRF) to provide a reporting service, a solid waste processing service, and/or a recyclables processing service to another franchisee consistent with the framework for MRF services and reporting of RCMC [6.20.170](#).

6.20.160 Medical waste.

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A. Commercial franchisees shall not be required to divert treated medical waste.

~~B. All franchisees shall nevertheless on a quarterly basis report to the administrator all combined or separately collected treated medical waste tonnage disposed of during the previous quarter by disposal location. The franchisee may rely on and use guidelines, forms and other appropriate material to assist franchisees in preparing such reports developed by the WRMD. A franchisee's failure to file the required treated medical waste disposal reports shall constitute cause for termination or suspension of its franchise pursuant to RCMC 6.20.130.~~

B. No treated medical waste from commercial or residential solid waste generators shall be delivered by a permittee to a materials recovery facility for the purpose of recycling.

~~6.20.210 Inspection authority.~~

~~A. Each franchisee shall at all times maintain accurate and complete accounts of all revenues and income arising out of its operations under the franchise granted pursuant to this chapter; all solid waste collected, transported and/or disposed of; the source of such solid waste; and the final destination of such solid waste. Franchisee's books, accounts and records reasonably necessary for the enforcement of this chapter and the franchise agreement shall be made available for inspection, examination and audit during normal business hours by authorized officers, employees and agents of the city. The city shall give written notice at least three days prior to any inspection, audit or examination of these records.~~

~~B. Where the administrator determines that an audit is necessary, franchisees shall be responsible for reimbursement of audit costs, including any city staff or consultant services, to perform audits of accounts of all franchisee revenues and income arising out of operations under the franchise granted pursuant to this chapter.~~

6.20.170 Enforcement.

Except as otherwise expressly provided, the provisions of this chapter shall be administered and enforced within the city by the administrator or other staff and enforcement officials designated by the administrator.

6.20.180 Abatement proceedings.

Any operation or activity contrary to the provisions of this chapter or a franchise agreement, including the terms and conditions of any franchise, is unlawful and shall constitute a public nuisance. The administrator is authorized to commence in the name of the city actions or proceedings to abate and enjoin any such operation or activity.

6.20.190 Notices.

A. Whenever a provision of this chapter authorizes or requires a public hearing to be conducted by the city council, notice of the time, date, place and purpose of the hearing shall be published at least once not later than 10 calendar days in advance of the date of such hearing in a

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newspaper of general circulation which is published within the city, and shall be served upon each franchisee who is affected by such hearing.

B. Any written notice or other communication to a franchisee which is authorized or required by this chapter shall be deemed served and effective for all purposes when deposited in the United States mail, postage prepaid, and addressed to the latest address of the franchisee shown in the city records pertaining to the franchise.

6.20.200 On-site storage.

Every owner, ~~tenant or occupant~~ of ~~a residential dwelling unit or multi-family residential property~~ ~~any multiple family dwelling units~~ and every owner, operator or keeper of any business with a fixed location in the city which generates solid waste and/or recyclable materials shall provide and at all times keep within an enclosure, or conveniently located near an enclosure or building, water-tight containers for solid waste and suitable containers for recyclable materials, and shall cause to be deposited in such containers, and not elsewhere, all solid waste and/or recyclable materials which accumulate on the premises. The containers shall have tightly fitted covers and shall not leak or permit the escape of odors. Notwithstanding the requirements of this section, generators shall not be required to set out or store recyclable materials together with solid waste and generators shall be allowed to appropriately store recyclable materials for collection separate from solid waste. It shall be unlawful for any person to fail to comply with the requirements of this section. Containers shall be clearly identified with the name of the franchisee.

~~**6.20.260 Signs. This Section is covered in the franchise agreement.**~~

~~Each franchisee shall have permanently displayed in a prominent place on the exterior of each truck utilized in the collection, removal or transportation of commercial solid waste under its franchise a sign which contains such information as is required by regulation of the city engineer adopted pursuant to the provisions of the California Code of Regulations, Title 14, Section 17344. [Ord. 23-2009 § B(26)].~~

~~**6.20.270 Office required. This Section is covered in the franchise agreement.**~~

~~Every franchisee shall at all times maintain a central office within the city, or within the metropolitan area immediately adjacent to the city, where the agent, servant or representative of the franchisee can be reached by telephone 9:00 a.m. through 5:00 p.m., Mondays through Fridays, legal holidays excepted. Such office shall have a local telephone number so that customers served by the franchisee may contact the franchisee without the necessity of making a long distance telephone call. [Ord. 23-2009 § B(27)].~~

6.20.210 Solid waste disposal restrictions.

A. It shall be unlawful for any franchisee to do any of the following:

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1. To operate or have an interest in a solid waste disposal site, other than a transfer, receiving and/or processing station, within the city;
2. To operate a solid waste disposal area in the city; or
3. To dump any solid waste upon, or permit the same to fall upon, any property, road or highway other than the areas designated by this chapter for the disposal or dumping of solid waste.

B. It shall be unlawful for any person to dump, deposit, or release any solid waste, rubbish, debris, garbage, trash, or recyclable materials in or on any public or private property, including streets, sidewalks, gutters, highways, or easements, except when acting in accordance with the solid waste collection regulations set forth in this chapter.

6.20.220 Use of containers.

No person other than a customer who has contracted for service with a franchisee, or a person with such customer's consent, shall deposit solid waste into a ~~commercial~~ solid waste bin, drop box or compactor placed in the city by a franchisee for the purpose of receiving solid waste.

~~6.20.300 Commercial solid waste and recyclables ownership.~~

~~Commercial solid waste and recyclables lawfully deposited in bins, drop boxes or other containers used by a franchisee for collection for either disposal or recycling shall become the property of the franchisee upon its deposit in any such container.~~

~~6.20.310 Indemnification.~~

~~Each franchisee must agree to defend, with counsel to be agreed upon by both parties, indemnify, and hold harmless the city and its agents, officers, servants, and employees, from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to city employees, agents, or officers which arise from, or are connected with, or are caused or claimed to be caused by acts or omissions of franchisee, or their agents, officers or employees, in the performance of the nonexclusive franchise agreement, or in performing the work or services therein, and all costs and expenses of investigating and defending against same; provided, however, that franchisee's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the city, its agents, officers, or employees. This indemnification requirement shall be included in every franchise agreement.~~ **6.20.320 Insurance.** Each franchisee shall maintain, at its own expense, insurance coverages, as provided in the franchise agreement or as established from time to time by the administrator. All such insurance shall remain in effect, uninterrupted, through the term of the franchise agreement.

~~B. Minimum insurance coverage shall include the following items, in amounts to be determined by the administrator: comprehensive general liability and insurance services office covering~~

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~~broad form comprehensive general liability automobile liability; workers' compensation insurance as required by the Labor Code of the State of California and employer's liability insurance.~~

~~C. The city and each member agency and, in their capacities as such, their officers, agents and employees shall be named as primary insureds in such policies. All such policies shall contain a provision requiring that written notice be mailed to the city by the insurer not less than 30 days in advance of the cancellation, modification or reduction of the insurance, or failure to renew such insurance, whether by the insurer or insured, and whether for nonpayment of premium or otherwise. Certificates of insurance shall be filed with the administrator prior to the issuance of any franchise.~~

~~D. Any act, omission or circumstance which results in the holder of a franchise being out of compliance with the requirements of this section during the term of the franchise shall constitute grounds for the immediate suspension of the franchise, without advance notice or hearing, pending re-establishment of compliance by the franchisee with the requirements hereof.~~

6.20.230 Rules and regulations.

A. The collection and subsequent transportation and disposal of commercial solid waste and recyclable materials within the city is under the supervision of the administrator who shall have the power to promulgate rules and regulations regulating such collection and subsequent transportation and disposal, including but not limited to:

1. Commercial solid waste generation, storage, recycling, recovery, accumulation, collection, removal, transportation and disposal;
2. The manner in which commercial solid waste collection and recycling services are provided;
3. Types of commercial solid waste and recycling containers and vehicles used therefor;
4. The operation and maintenance of sanitary methods of commercial solid waste disposal;
5. Reporting requirements for recycling facilities.

B. A copy of said rules and regulations and all amendments thereto shall be sent by registered or certified mail, postage prepaid, to all affected franchisees addressed to their last place of business. To the extent not otherwise provided by law, it shall be unlawful for a franchisee to collect and subsequently transport or dispose of commercial solid waste contrary to any regulation, order, permit or requirement promulgated by the administrator.

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C. All such rules and regulations shall be consistent with the provisions of this chapter and shall be effective on the thirtieth day following the filing of any such rules and regulations with the city clerk.

D. Any person who asserts that he or she is aggrieved by the terms or application of a regulation issued pursuant to this section may appeal the issuance of such regulation by filing a written notice of appeal with the city clerk. The notice of appeal shall specifically identify the regulation or regulations from which the appeal is taken and the reasons for the appeal. Upon receipt of such notice, the city clerk shall schedule the appeal for a public hearing by the city council, notice of which shall be given in the manner prescribed by RCMC [6.20.240](#). At the conclusion of the public hearing, the city council shall be vested with jurisdiction to deny the appeal or to rescind or modify the regulation. The city council's determination in this regard shall be final.

E. Any regulation from which an appeal is filed prior to its effective date shall not become effective until the date of a determination by the city council of the appeal. Any regulation from which an appeal is filed on or subsequent to the effective date thereof shall remain in full force and effect during the pendency of the appeal, and any decision that rescinds or modifies the regulation shall apply prospectively.

F. It shall be unlawful and constitute a violation of this chapter for any person to violate or otherwise fail to comply with any rule or regulation issued pursuant to this section.

6.20.240 Vehicle inspection and tags.

~~All vehicles and other equipment used in the collection and subsequent transportation, and disposal of commercial solid waste in the city shall be inspected as often as the administrator deems necessary and at such times and places as shall be designated by said administrator. No vehicle shall be used in the collection and subsequent transportation, and/or disposal of commercial solid waste within the city unless it carries a current, unrevoked tag or decal issued by the city authorizing such activity. The administrator shall provide for each vehicle operated by franchisee a durable tag or decal upon payment of the applicable fee. Such tag or decal shall be securely fastened and maintained by the franchisee on each vehicle so as to be clearly visible. The administrator may suspend the tag or decal of any vehicle that fails to meet the requirements of this section, and such vehicle shall not be used for the collection and subsequent transportation or disposal of refuse until the tag or decal has been reinstated by the administrator. In the event any vehicle fails to meet the requirements of this section, or in the event any vehicle becomes temporarily or permanently inoperable or unavailable, the franchisee may transfer said vehicle's tag or decal to another vehicle to be operated by franchisee, which vehicle has passed inspection and does meet the requirements of this section. The franchisee must notify the administrator of any changes to its vehicles or tags.~~

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A. All trucks and containers used in the collection, removal, transportation or storage of commercial solid waste in the city shall be subject to inspection by the city engineer for the purpose of determining whether or not the trucks and containers comply with California Code of Regulations, Title [14](#), Sections 17341 through 17345.

6.20.250 Vehicle requirements.

A. The bodies of vehicles used in the collection, removal or transportation of commercial solid waste in the city shall have beds of metal or other impervious material which can be cleaned, and shall otherwise be of a type approved by the city engineer's department adopted pursuant to the California Code of Regulations, Title [14](#), Section 17341. B. The city engineer shall be authorized to issue administrative regulations pertaining to specifications for vehicles and containers, the cleansing and disinfecting thereof, and other sanitary measures in connection therewith.

6.20.260 Covered load requirement.

A. All franchisee vehicles and all privately owned or operated vehicles using solid waste disposal facilities in the city shall have their vehicle loads covered, with a tarp or equivalent cover, to ensure protection from littering during transportation from the origin of the trip to any waste disposal facility located in the city.

B. All vehicles hauling materials with the load originating in the city to a waste disposal facility located outside of the city shall have their loads covered while in transit within the city.

C. Every permitted or nonpermitted waste disposal facility located within the city shall post signs notifying the public that it is illegal to haul uncovered loads to the facility. These facilities shall cooperate with the city enforcement staff by providing covered load education and promotion information to their customers to help assure the effectiveness of this chapter.

6.20.270 Rights reserved to city.

In addition to all other rights reserved to the city under this chapter, the following shall apply:

A. There is hereby reserved to the city every right and power, and the exercise thereof, which is reserved or authorized by any provision of any lawful ordinance or resolution of the city, whether enacted before or after the effective date of the ordinance codified in this chapter.

B. Neither the granting of any franchise nor any provision of any franchise shall constitute a waiver of or a bar to the exercise of any governmental right or power of the city.

C. The franchisee shall have no recourse whatsoever against the city, its officers, employees or agents or any of the city member entities, their officers, employees, or agents for any loss, cost, expense or damage arising out of any provision or requirement of this chapter or of any franchise issued under this chapter or because of the enforcement of this chapter.

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D. There is hereby expressly reserved to the city the power and authority to amend any section of this chapter so as to require additional or greater standards on the part of the franchisee and the power and authority to increase the franchise fees to be paid by the franchisee pursuant to RCMC [6.20.150](#).

6.20.280 Other franchise provisions.

A. The city council may expand or contract the scope of franchise agreements over time due to changes in law or interpretations of law.

~~B. The administrator shall have the right to inspect franchisee's records for purposes of determining AB 939 and other reporting requirements. The administrator may also inspect franchisee's records to determine proper calculation and payment of franchise fees. The administrator will provide franchisee with at least three days' advance written notice of its intent to inspect any of franchisee's records.~~

~~C. The administrator retains the right to terminate or suspend the agreement, as provided in the agreement.~~

6.20.290 Criminal penalties for violations.

The following criminal penalties apply to violations of this chapter:

A. Violation as Misdemeanor. Unless otherwise specified by this chapter, violations of the provisions of this chapter or failure to comply with any of its requirements, including violations of terms and conditions established in connection with franchisees issued pursuant to this chapter, shall constitute a misdemeanor.

B. Penalty for Misdemeanor. Unless otherwise specified in this chapter, any person, whether as principal, agent, employee or otherwise, who violates this chapter or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$1,000 or imprisoned for not more than six months in the county jail, or by both such fine and imprisonment. Each day such violation continues shall be considered a separate offense. Such penalties shall be in addition to any late fees, civil penalties, administrative civil penalties, or other charges payable to the city by a franchisee for the same period of time or for the same violations.

C. Violation as Infraction. Unless otherwise specified by this chapter [or the franchise agreement](#), the following violations by a franchisee are infractions:

1. Delinquent Payment of Franchise Fee. A delinquent payment of a franchise fee that is not received by the city before the first day of the month following the due date established under RCMC [6.20.150](#)(B) is a violation and a separate violation for every month the payment remains delinquent thereafter.

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2. Delinquent Payment of Franchise Fee Late Charge. A delinquent payment of a late payment charge and/or interest charges for a late franchise fee payment (under RCMC 6.20.150(F)) that is not received by the city before the first day of the month following the due date is a violation and a separate violation for every month the payment remains delinquent thereafter.

3. Delinquent Payment of Late Report Charge. A delinquent payment of a late charge for a delinquent quarterly report of diversion (under RCMC 6.20.170(F)) that is not received before the first day of the month following the due date is a violation and a separate violation for every month the payment remains delinquent thereafter.

4. Delinquent Payment of Audit Fee. A delinquent payment of an audit fee (under RCMC 6.20.210(B)) that is not received by the city before the first day of the month following the due date is a violation and a separate violation for every month the payment remains delinquent thereafter.

5. Delinquent Diversion Report. A delinquent quarterly report of diversion (under RCMC 6.20.170) that is not received by the city before the first day of the third month following the end of the quarter reporting is a violation and a separate violation for every month the report remains delinquent thereafter.

6. Incomplete Diversion Report. If a quarterly report of diversion (under RCMC 6.20.170) that is received by the city is incomplete, the inadequacy must be remedied or corrected by the franchisee before the first day of the third month following the end of the quarter or it is a violation and a separate violation for every month the report remains incomplete thereafter. A complete quarterly report of diversion includes all information as may be required by the administrator. Partial quarterly reports of diversion will be considered incomplete.

D. Penalty for Infraction. Unless otherwise specified by this chapter [or in the franchise agreement](#), an infraction is punishable by a fine not exceeding \$200.00 for a first violation of any offense under subsection (C) of this section within the preceding 12-month period; a fine of \$500.00 for a second violation of the same offense under subsection (C) of this section within the preceding 12-month period; and a fine of \$1,000 for each additional violation of the same offense under subsection (C) of this section within the preceding 12-month period. The administrator or the city attorney shall also have the discretion to elevate any infraction under subsection (C) of this section to a misdemeanor, punishable under subsection (B) of this section. Such penalties shall be in addition to any late fees, civil penalties, administrative civil penalties, or other charges payable to the city by a franchisee for the same period of time or for the same violation.

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E. Separate Remedies. Each civil, criminal, or administrative civil penalty imposed pursuant to this chapter for any separate violation shall be separate from, and in addition to, any other provision of law and does not supersede or limit any and all other legal remedies and penalties, civil, administrative or criminal which may be applicable under other laws.

6.20.300 Civil penalties for violations.

The following administrative civil penalties apply to violations of this chapter:

A. Administrative Civil Penalties. In addition to any other remedies provided by this chapter, any person who violates any provision of this chapter shall be liable for an administrative civil penalty to be imposed by the administrator. The amount of the penalty shall not be more than \$1,000 for each day of violation. Any person who knowingly violates any provision of this chapter, after reasonable notice of the violation, is liable for an administrative civil penalty of not more than \$1,000 for each day of violation. In determining the civil, criminal, and administrative civil penalties imposed pursuant to this chapter, all relevant circumstances shall be considered, including but not limited to the extent of harm or potential harm caused by the violation, the nature of the violation and the period of time over which it occurred, the frequency of past violations, and the corrective action, if any, taken by the violator.

B. Administrative Civil Penalty Procedure.

1. Notice of Violation. The administrator shall notify the violator in writing of the time within an alleged violation must be remedied or corrected. The notice shall provide that an administrative civil penalty will be imposed if the continuing violation is not remedied or corrected within the time stated.

2. Notice of Penalty and Opportunity for Hearing. Notice of any administrative civil penalty shall set forth the alleged acts or failures to act that constitute a basis for liability and the amount of the proposed administrative civil penalty. The notice of administrative civil penalty shall be served by personal service or certified mail and shall inform the person so served that the administrative civil penalty imposed may be administratively reviewed by a city-designated hearing officer before it is enforced if a request for hearing is timely filed. The notice shall also specify the procedure for requesting a hearing before the hearing officer.

3. Administrative Review. If a person desires administrative review of the administrative civil penalty imposed by the administrator, it shall request a hearing by timely filing a written request pursuant to the provisions of RCMC [6.20.430](#). The written request for an appeal must be accompanied by an administrative hearing fee, as established by the city council. Any such appeal shall be in writing, shall state the specific reasons therefor and grounds asserted for relief, and shall be filed with the administrator not later than 15 calendar days after the date of service of any such decision. A hearing shall be

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conducted by the hearing officer pursuant to RCMC [6.20.440](#) unless the person has waived the right to a hearing or has entered into a settlement agreement with the administrator. A person waives the right to a hearing by so stating in writing or by failure to file with the administrator a written request for hearing within 15 days after service of the notice of opportunity for hearing.

4. Effective Date. Where the person has waived the right to a hearing or where the person has entered into a settlement agreement, the administrative civil penalty shall not be subject to review by any court, the hearing authority, or any other agency and shall be effective 15 days after notice of the penalty is served. Where a hearing has been held, the penalty shall be effective 20 days after the decision of the hearing authority becomes final.

5. Judicial Review. The manner of contesting the final order of the hearing officer concerning any administrative civil penalty is governed by Government Code Section 53069.4, or any successor provision thereto. Service of the notice of appeal authorized by Government Code Section 53069.4 upon the city shall be by service upon the city clerk.

6. Payment of Costs of Enforcement/Collection. In addition to any penalty, sanction, fine or imprisonment, each person who violates this chapter shall be required to pay any and all expenses of enforcement including costs necessary to bring the person into compliance with this chapter. In addition to all remedies contained herein, the city may pursue all reasonable and legal means in collecting those sums authorized and due.

7. Collection. Payment of the penalty shall be made within 30 days from when the penalty became effective. In addition to all remedies herein contained, the city may pursue all reasonable and legal means in collecting administrative civil penalties.

6.20.310 Settlement process.

The administrator may adopt a written settlement agreement process for the settlement of violations of this chapter, which shall take into consideration the penalty factors set forth in RCMC [6.20.400](#).

6.20.320 Hearing officer.

Whenever the term "hearing officer" is utilized in this chapter, it shall be deemed to refer to one or more qualified persons assigned the responsibility of conducting a hearing by the city manager.

6.20.330 Appeals.

Any decision of the administrator may be appealed to a hearing officer appointed by the city manager. Any such appeal shall be in writing, shall state the specific reasons therefor and grounds asserted for relief, and shall be filed with the administrator not later than 15 days after

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the date of service of any such decision. If an appeal is not filed within the time or in the manner prescribed above, the right to review of the action against which complaint is made shall be deemed to have been waived.

6.20.340 Appeal hearing.

A. Not later than 30 days following the date of filing an appeal within the time and in the manner prescribed by RCMC [6.20.430](#), the hearing officer shall conduct a hearing for the purpose of determining whether the appeal should be granted. Written notice of the time, date and place of the hearing shall be mailed to the appellant not later than 10 days preceding the date of the hearing.

B. The provisions of the California Administrative Procedure Act (commencing at Section 11500 of the Government Code) shall not be applicable to such hearings; nor shall formal rules of evidence in civil or criminal judicial proceedings be so applicable. Testimony shall be given under oath, and the parties to the hearing shall have the right to cross-examine witnesses. Any relevant evidence shall be admitted if it is the type of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rules which make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state. Hearsay evidence may be admitted for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions. Irrelevant and unduly repetitious evidence shall be excluded.

1. Record. A record of the entire hearing proceedings shall be made by either a certified court reporter or tape recorder operated by the hearing officer. A transcript of the proceedings shall be made available to all parties upon request and upon payment of the fee prescribed therefor. Such fees may be established and revised from time to time by the city council.

2. Scope. Only those matters or issues specifically raised by the appellant(s) in the written appeal shall be considered in the hearing on appeal.

3. Oaths and Certification. The hearing officer has the power to administer oaths and affirmations and to certify official acts.

4. Oral Evidence. Oral evidence shall only be taken on oath or affirmation.

5. Rights of Parties. Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues of the hearing even though the matter was not raised in the direct examination, to impeach any witness regardless of which party first called him or her to testify, to

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present rebuttal evidence and to represent himself or herself or to be represented by anyone of his or her choice who is lawfully permitted to do so. No appellant shall be required to testify without his or her consent.

6. At the conclusion of the hearing, the hearing authority shall prepare a written decision that either grants or conditionally grants or denies the appeal, and contains findings of fact and conclusions. Notice of the written decision, including a copy thereof, shall be filed with the administrator and served not later than 30 days following the date on which the hearing is closed on the appellant and on other persons who appeared at the hearing and requested a copy. Service shall be by personal delivery or certified mail.

C. City and appellant shall jointly pay for the costs of the hearing.

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ATTACHMENT 2**ORDINANCE NO. 22-2012**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA
 REPEALING SACRAMENTO COUNTY CODE CHAPTER 6.20 ON SOLID WASTE,
 PREVIOUSLY INCORPORATED BY REFERENCE, AND AMENDING CHAPTERS 6.20 AND
 6.21 OF THE RANCHO CORDOVA MUNICIPAL CODE ON SOLID WASTE AND RECYCLING**

WHEREAS, California Public Resources Code section 40059 gives cities broad authority over matters pertaining to the collection of solid waste and recyclables within their jurisdictions, including the authority to determine whether such collection shall be handled by exclusive or non-exclusive franchise agreements; and

WHEREAS, the City Council of the City of Rancho Cordova has determined that the public health, safety, and welfare require that the Rancho Cordova Municipal Code ("Municipal Code") include clear provisions regarding the collection of solid waste and recyclables within the City; and

WHEREAS, on October 20, 2003, the City Council adopted Ordinance No. 20-2003 and Ordinance No. 21-2003, which incorporated by reference numerous Sacramento County Code provisions, including Sacramento County Code Chapter 6.20 pertaining to solid waste; and

WHEREAS, on November 7, 2005, the City Council adopted Ordinance 22-2005 on commercial solid waste collection; and then subsequently repealed Ordinance 22-2005 by passing Ordinance No. 23-2009 on December 7, 2009, which restated and amended the City's regulations pertaining to commercial solid waste collection and establishing non-exclusive franchises for the collection of commercial solid waste; and

WHEREAS, the City Council desires to amend numerous provisions of Municipal Code Chapters 6.20 and 6.21 pertaining to the collection of commercial and residential solid waste and recyclables to resolve conflicts between the Municipal Code and franchise agreements and to reflect changes to State law regulations set forth by CalRecycle; and

WHEREAS, Sacramento County Code Chapter 6.20 on solid waste, previously incorporated by reference into the Municipal Code, is no longer a necessary part of the City's Municipal Code; and

THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA DOES ORDAIN AS FOLLOWS:

SECTION 1. The former incorporation by reference of Sacramento County Code Chapter 6.20 on solid waste is hereby repealed from the Rancho Cordova Municipal Code.

SECTION 2. Chapter 6.20, "Solid Waste Management," of the Rancho Cordova Municipal Code is hereby repealed and replaced to read as follows:

"Chapter 6.20" - Solid Waste Management

- | | |
|-----------------|--|
| <u>6.20.010</u> | Purpose and declarations. |
| <u>6.20.020</u> | Definitions. |
| <u>6.20.030</u> | Collection or transportation prohibited. |
| <u>6.20.035</u> | Mandatory service |
| <u>6.20.040</u> | Public agency exemption |

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<u>6.20.045</u>	Administrator's exemption
<u>6.20.050</u>	Franchise requirement
<u>6.20.055</u>	Exempt collection or transportation.
<u>6.20.060</u>	City Council authority to grant franchise
<u>6.20.070</u>	Franchise terms and conditions.
<u>6.20.080</u>	Application for franchise.
<u>6.20.090</u>	Commercial franchise application review process
<u>6.20.095</u>	Residential franchise application review process
<u>6.20.100</u>	Appeal upon denial of award
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Section 6.20.010 Purpose and declarations.

A. It is hereby declared and determined that the business of collecting and subsequently transporting, transferring, disposing and/or recycling of residential and commercial solid waste generated, kept or accumulated within the incorporated limits of the city of Rancho Cordova affects the health, safety, public welfare and quality of life of the inhabitants of the city. The city further declares that the business of collecting and disposing of residential and commercial solid waste is a public service and should be regulated by the city to ensure reliability and adequacy of service. The use of any public street or public property in connection with such business is of great concern to

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the city and should be regulated by the city. Therefore, it is the purpose of this chapter to provide such regulation.

The city further declares that residential collection service will be most efficient, and at a lower cost, when collection routes provide door-to-door service uninterrupted by competition in the same area; and that exclusive residential collection services allow for energy conservation in fuel consumed by collection equipment, for the reduction of traffic congestion on roads and streets, and for fewer adverse effects on public streets and rights-of-way due to less truck traffic.

B. It is the further purpose of this chapter to regulate such business in order to ensure its orderly operation and to minimize the adverse effects it may have on the local environment. It is also the purpose of this chapter, aside and apart from regulation, to require compensation for the value of the franchise issued by the city.

C. It is the further purpose of this chapter to provide for the uniform regulation of residential and commercial solid waste collection, removal and transportation within the geographical area of the city.

D. The city hereby elects to have the grant of franchises governed by this chapter, and any ordinances amendatory thereof, and these provisions shall constitute the exclusive procedure applicable to the granting of franchises for the conduct of the business of collecting, transporting or disposing of residential and commercial solid waste.

Section 6.20.020 Definitions.

Unless the context otherwise requires, the definitions set forth in this section shall govern the interpretation of this chapter.

A. "Administrator" means the administrator of the city's solid waste program. The city council shall designate by resolution the administrator.

B. "City" means the city of Rancho Cordova.

C. "City council" means the city council of the city of Rancho Cordova.

D. "City clerk" means the city clerk of the city of Rancho Cordova.

E. "City engineer" means the engineer of the city of Rancho Cordova.

F. "City limits" means the territorial jurisdiction of the city of Rancho Cordova.

G. "Collection" means the act of picking-up and removing solid waste or recyclable material at the place of waste generation.

H. "Commercial hauler" or means any person who loads, collects, hauls, or transports commercial solid waste for a fee by use of any means, including, but not limited to, a dumpster truck, roll-off truck; a side-load, front-load, or rear-load garbage truck; or a trailer.

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- I. "Commercial solid waste" means all solid waste, as defined in this chapter, that is generated by and at commercial and industrial sources, multifamily residential property, and construction and demolition activities that is collected by a commercial hauler.
- J. "Franchise" or "Commercial franchise" means a commercial solid waste and recyclables collection franchise issued under the provisions of this chapter to a commercial hauler within the city.
- K. "Franchisee" means a person or entity holding a franchise issued pursuant to this chapter.
- L. "Materials recovery facility" or "MRF" means any facility designed, operated, and legally permitted for the purpose of receiving, sorting, processing, storing, or preparing recyclable materials for sale and which has obtained, and maintains valid permit(s) to accept, process or store recyclable materials. This definition shall apply only within the framework of materials recovery facility services and reporting of this chapter.
- M. "Multifamily residential property" means five or more individual living units located on a single parcel of land and any mobile home park located within the city.
- N. "Person" means an individual, firm, limited liability company, association, partnership, industry, public or private corporation, or any other entity whatsoever.
- O. "Police chief" means the chief of police of the city of Rancho Cordova.
- P. "Recycling" means the process of collecting, sorting, cleansing, treating and reconstituting materials that would otherwise become solid waste and returning them for use or reuse in the form of raw materials for new, used or reconstituted products which meet the quality standard necessary to be used in the marketplace. "Recycling" does not include transformation as defined in Public Resources Code Section 40201.
- Q. "Recycling facilities" means those facilities or operations that receive, process, and transfer to market recyclable materials that have been source separated from the solid waste stream.
- R. "Recyclable material" or "recyclables" means materials that have been separated from the solid waste stream prior to disposal for the purpose of returning them for use or reuse in the form of raw materials for new, used or reconstituted products which meet the quality standard necessary to be used in the marketplace, and that are not landfilled.
- S. "Removal" means the act of taking solid wastes or recyclable materials from the place of generation.
- T. "Residential dwelling unit" means an individual living unit in a single family dwelling, condominium, townhouse, mobile home, duplex (two units), triplex (three units), fourplex (four units) or building of four or less total individual living units intended for, or capable of being utilized for, residential living other than a hotel or motel.
- U. "Residential hauler" means any person who loads, collects, hauls, or transports residential solid waste for a fee by use of any means, including, but not limited to, a dumpster truck; roll-off truck; a side-load, front-load, or rear-load garbage truck; or a trailer.

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V. “Residential solid waste” means all solid waste, as defined in this chapter, that is generated by and at a residential dwelling unit.

W. “Residential franchise” means a residential solid waste collection franchise issued under the provisions of this chapter to a residential hauler within the city.

X. “Rubbish” means nonputrescible solid wastes such as ashes, paper, cardboard, tin cans, yard waste, wood, glass, bedding, crockery, plastics, rubber by-products and litter.

Y. “Solid waste” means all putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, construction and demolition debris, discarded home and industrial appliances, dewatered, treated or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semi-solid wastes, and other discarded solid and semi-solid wastes. Solid waste does not include hazardous waste or low-level radioactive waste regulated under Chapter 7.6 (commencing with Section 25800) of Division 20 of the Health and Safety Code, or medical waste. Solid waste does not include recyclable materials set out for separate collection for the purposes of recycling, and that are not landfilled.

Z. “Source separate” or “source separated” means the process of removing recyclable materials from solid waste for the purpose of recycling.

AA. “Treated medical waste” means medical waste as defined in subsection (a) of Health and Safety Code Section 25023.5.

BB. “Construction and Demolition Debris” means used or discarded materials resulting from construction, renovation, remodeling, repair or demolition operations on any pavement, house, commercial building, or other structure and such other materials as may be removed during the normal cleanup process of such construction, renovation, remodeling, repair, or demolition operations. This includes mixed construction and demolition debris and source separated recyclable construction and demolition material.

Section 6.20.030 Collection or transportation prohibited.

Except as authorized by RCMC 6.20.040 and 6.20.050, it shall be unlawful for any person to engage in the business of collecting, removing or transporting residential or commercial solid waste, or otherwise organizing, directing, sponsoring, brokering or causing the collection, removal or transportation of commercial residential or solid waste within the city without possessing a valid franchise or valid residential franchise granted by the city.

Section 6.20.035 Mandatory Service.

Except as otherwise expressly provided by this Chapter, the owner, tenant, or occupant of every improved parcel (parcel with one or more business and/or residential buildings approved for occupancy) located within the city shall subscribe to a solid waste and recyclables collection service from a residential or commercial franchisee operating pursuant to this Chapter. Each business (DBA) and/or residential building with a separate address and each separate business unit and each separate residential unit (under separate rental agreement) with a common address located on such parcel shall subscribe to such service. The owner, tenant or occupant of a parcel with a residential dwelling unit shall subscribe to a collection service from a residential franchisee operating according to this chapter. The owner, tenant, or occupant of a parcel with a commercial

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or multifamily property shall subscribe to a collection service from a commercial franchisee operating according to this chapter.

Any owner of an improved five-acre or larger parcel may submit a written request for an exemption from mandatory service to the administrator, who will consider such requests on a case by case basis. The administrator will submit a written response within 30 days of receipt of a written request either approving or denying the exemption from mandatory service.

Section 6.20.040 Public Agency Exemption.

The provisions of Section 6.20.035 shall not be applicable to the United States, the State of California, the County, a city, a special district or any other local public agency with respect to the accumulation, collection or transportation of refuse resulting from operations of such agency.

Section 6.20.045 Administrator Exemption.

The administrator shall, upon application, grant a written exemption from the mandatory collection service requirements established by Section 6.20.035 for any property utilized for commercial purposes which does not generate solid waste, and may grant such an exemption for any residential dwelling unit (but not multi-family residential properties) if it determines that the occupant has made adequate and appropriate arrangements for the disposal of solid waste and required subscription to collection service would constitute an unreasonable hardship or impractical burden.

Section 6.20.050 Franchise requirement.

It is unlawful for any person to engage in the business of collecting, transporting or disposing of residential or commercial solid waste kept, accumulated or generated in the city, or to engage in the business of soliciting accounts or invoicing customers for residential or commercial solid waste service in the city unless:

A. A franchise or residential franchise therefor has first been granted pursuant to the provisions of this chapter and such franchise is in full force and effect and a written franchise agreement therefor has been executed between such person and the city and such agreement is in full force and effect; or

Section 6.20.055 Exempt collection or transportation.

The following persons shall be authorized to organize, direct or sponsor the collection, removal or transportation of residential or commercial solid waste within the city, or collect, remove or transport such solid waste, without a franchise or a residential franchise:

A The United States, the state of California, a city, a special district or other local public agency, or any employee or member of the Armed Forces thereof, or any individual or employee of such individual who has entered into a contract for solid waste collection with a federal or state agency, when collecting or transporting solid waste produced by operation of the public entity under a system of solid waste collection and transportation operated and maintained by the public agency;

B. The owner, operator or occupant or employee of a farm or ranch consisting of five acres or more, when transporting for off-site disposal solid waste accumulated as a result of operation of the farm or ranch;

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C. An owner or occupant of a residential or multifamily residential property, when collecting or transporting rubbish, not containing garbage, from his or her residential premises to a lawful point of disposal;

D. A residential construction contractor, commercial or residential gardener and those engaged in the business of cleaning residential and commercial properties and employees thereof, when collecting or transporting rubbish consisting of by-products of the services provided to a lawful disposal location;

E. A person or employee thereof, when collecting or transporting dead animals, bones, meat scraps or food waste resulting from food processing plants for tallow or fertilizer, or other waste material to be used as raw material in manufacturing, or solid waste that is collected without charging a fee to the customer for purposes of salvage; provided, that such persons shall reuse or recycle or cause to be reused or recycled all materials collected, and shall not transport or arrange for the transport of any collected materials to a disposal site;

F. An operator or employee thereof of one or more industrial plants which are under single ownership, when collecting or transporting wastes which cannot be handled by standard solid waste collection equipment or which involve significant health, operating or handling hazards, including but not limited to rice hulls, tomato pulp, chemical residues, explosives, and other toxic, noxious or hazardous substances; provided, that all such wastes shall be deposited at an appropriate disposal area permitted pursuant to California State Solid or Hazardous Waste Management Standards.

Any transportation of solid waste, refuse or rubbish authorized by this section shall be conducted in strict compliance with any and all requirements of this chapter relating to transportation and any regulations issued hereunder

G. Any person collecting or transporting hazardous waste, medical waste and designated waste, as defined in law, regardless of its source;

H. Any person collecting or transporting by-products of sewage treatment, including sludge, sludge ash, grit, and screenings;

I. Any person collecting or transporting residue or non-processable waste from a solid waste management facility, including material recovery, composting, and transformation facilities; and

J. Municipal corporations and other governmental agencies using their own vehicles engaged in the collection, transportation, or disposal of solid waste within the city.

Section 6.20.060 City council authority to grant franchise.

A. The city council may and is hereby empowered to grant to a qualified applicant a nonexclusive franchise to engage in the business of collecting, transporting or disposing of commercial solid waste and designated recyclable materials kept, accumulated or generated in the city, or to delegate the authority, by resolution, to the administrator to grant the franchise.

B. The city council may and is hereby empowered to grant to a qualified applicant an exclusive residential franchise to engage in the business of collecting, transporting or disposing of residential solid waste and recyclable materials kept, accumulated or generated in the city, or to delegate the authority, by resolution, to the administrator to grant the franchise, according to the procedures set forth in Sections 6.20.080 and 6.20.095 of this chapter.

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C. The city council may grant a commercial franchise or a residential franchise to an applicant based on compliance with this chapter. Any grant of a commercial franchise or a residential franchise by the city council may be subject to such terms, conditions, rules, regulations, restrictions, and limitations as the city council deems necessary to protect the public health, safety, or welfare.

D. The city council hereby empowers and grants to the administrator the authority to administer and negotiate nonsubstantive changes to the commercial franchise and residential franchise agreements. The city council may delegate authority by resolution to the administrator to administer, negotiate and execute franchise agreements.

Section 6.20.070 Franchise terms and conditions.

A. All franchises and residential franchises shall be subject to the terms and conditions specified in this chapter, in the franchise agreement and in all other applicable federal, state and local laws and regulations.

B. In granting any franchise or residential franchise, the city council may prescribe such other additional terms and conditions, not in conflict with this chapter, as in the judgment of the city council are in the public interest.

C. Each franchisee shall provide residential or commercial solid waste collection, removal, recycling, and transportation services consistent with the provisions of this chapter, the terms and conditions of the franchise issued to the franchisee, and any applicable federal, state, or local statute, ordinance, rule or regulation.

D. Each franchisee shall provide services without undue interruptions caused by mechanical failures or other inadequacies of equipment and shall utilize equipment in quantities and of an age and quality adequate for the provisions of reliable service and to provide preventive and repair maintenance of such equipment sufficient to ensure reliability.

Section 6.20.080 Application for commercial or residential franchise.

A. All applications for commercial or residential franchises pursuant to this chapter shall be in writing and shall be filed with the administrator.

B. Each application for a commercial or residential franchise from a company that has never held a commercial or residential franchise in the city shall be submitted by the applicant on a form provided by the administrator. The application shall include all attachments required by the administrator. At a minimum, the application shall contain the following information:

1. Identification.

- a. The name and address of the applicant.

- b. Business address and telephone number of the applicant.

- c. Address where all vehicles and operating equipment used within the city will be kept.

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d. If the applicant is a partnership, the applicant shall include the name and address of each partner, general, limited or otherwise, owning more than 10 percent ownership in the partnership and their percentage of ownership.

e. If the applicant is a corporation, the application shall state the names and addresses of the corporation's directors, date and place of incorporation, main offices, major stockholders and associates, and the names and addresses of the parent and subsidiary companies.

f. If the applicant is an affiliate or a franchised operation of another corporation (not to be confused in this instance with a solid waste franchisee of the city), the applicant shall list the names and addresses of the parent or subsidiary companies, together with a description of their business interests and/or ownership.

g. If the applicant is a joint venture or other combination of persons and corporations, identify separately the names and addresses of each member of the joint venture or combined effort, together with their percentage interest.

2. Business Operations. The names of the executive, operational and financial managers to be used in connection with the solid waste collection services, together with documentation that such persons and the applicant have sufficient experience in solid waste handling to perform solid waste collection services in the city.

a. Attestation that books and accounts of all revenue and income arising out of its operations will be kept in a manner that conforms to generally accepted accounting principles.

b. A statement that the applicant shall obtain insurance prior to commencing business subject to the franchise agreement.

c. A statement that the applicant shall maintain and report on a timely basis all operational information and data elements reasonably required by the city to comply with its reporting requirements such as those established under AB 939, and as defined in the franchise agreement.

d. A complete listing and explanation of any civil or criminal rulings or judgments in excess of \$5,000, or convictions against applicant, any of applicant's partners, major stockholders, corporate directors or parent or subsidiary companies, occurring within the last five years. Applicants that are subject to the periodic reporting requirements of Section 13(a) of the Securities Exchange Act may, in lieu of the information required by this subsection, submit the information reported pursuant to 17 CFR 229.103 (Legal proceedings) and 229.403 (Security ownership of certain beneficial owners and management) on the most recent form 10-K filed by the applicant with the Securities and Exchange Commission.

3. Facilities and Equipment.

a. A description of all vehicles and equipment that the applicant owns, has control of, or intends to acquire for the collection, transportation, or disposal of commercial waste in the city and which are subject to the provisions of the franchise agreement. A statement as to whether said vehicles and equipment are self-unloading and equipped with audible automatic back-up warning devices. The minimum vehicle description for existing vehicles shall include Vehicle Identification Number (VIN) and license plate number.

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b. Evidence demonstrating that the applicant owns or will have access to suitable facilities for keeping vehicles and equipment clean and in good repair, and that the applicant owns or will have access to reasonable office and billing facilities.

c. Evidence demonstrating that the applicant owns or will have the legally enforceable right to use at least two collection vehicles, the bodies of which are closed, leak-resistant, and constructed for the purpose of solid waste collection, transportation, and disposal. In the alternative, for the purposes of this provision, an applicant may demonstrate by the evidence that they service and transport open-top roll-off boxes for the collection, transportation, and disposal of nonputrescible waste and/or roll-off compaction boxes which are closed, leak-resistant, and are constructed for the purpose of solid waste collection, transportation, and disposal.

4. Financial Resources. Applicant shall provide proof satisfactory to the administrator that the applicant has adequate financial resources to conduct commercial solid waste collection services.

5. Diversion Plans. Each franchisee shall submit a diversion plan with their franchise application. The diversion plan shall provide a detailed description of how the franchisee intends to divert recyclable materials from commercial solid waste in order to assist the city in meeting the city's AB 939 reporting requirements.

6. Application for Police Chief Review.

a. The city may request that the police chief review each franchise application prior to the city issuing a franchise. The administrator may refer all franchise applications or renewals pursuant to this chapter to the police chief who, in conjunction with city staff, shall make such investigation of the applicant as the police chief deems necessary in order to determine whether the applicant's character or the business responsibility of the firm the applicant represents is satisfactory. The requirements of this section apply to all pending or future applications or proposals for issuance or renewal of such franchise pursuant to this chapter. The police chief's investigation may include, but is not limited to, obtaining the fingerprints and a photograph of the applicant, or any other person connected with the firm which the applicant represents, and the obtaining of reports from the state and federal law enforcement agencies and reports from any other appropriate sources.

b. If requested to review an application, the police chief shall evaluate each franchise application or proposal to determine whether the operation of the business which the applicant or party submitting the proposal represents would involve an unreasonable risk to the health, safety or general welfare of the public. In making such a determination, the police chief shall consider the character of the applicant or party submitting the proposal and each director, officer, manager and other person who exercises policy control over the operations of the applicant or proponent, the business responsibility of the firm which the applicant or party submitting the proposal represents, and the manner in which the firm intends to conduct its business.

c. The police chief shall notify the administrator of the results of the investigation conducted pursuant to this section. If the police chief recommends disapproval of the application or proposal, the reasons for disapproval shall be specified in writing. The police chief shall forward a copy of the statement of reasons to the administrator and shall provide a copy to the applicant or party submitting the application.

7. Other.

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a. Any other evidence that demonstrates that the applicant is able to render collection and subsequent transportation, and/or disposal services in accordance with applicable federal, state and local statutes.

b. Such additional information as may be reasonably requested by the administrator.

c. During the application or proposal period and during the full term of any franchise, all information contained in the franchise application shall be kept up to date by the applicant who shall file a new verified statement within 48 hours of any change indicating in detail the nature of any change in the information.

C. Each application for a commercial or residential franchise from a company holding a valid, current commercial or residential franchise which is set to expire shall be submitted by the applicant on a form provided by the administrator. The application shall include all attachments required by the administrator.

D. The application shall be signed by the person applying for the commercial or residential solid waste and recyclables collection franchise or, in the case of a partnership or corporation, by a person authorized to bind the partnership or corporation. [Ord. 23-2009 § B(8)].

Section 6.20.090 Commercial franchise application review process.

A. The city council may award franchises for the collection of commercial solid waste within the city to applicants meeting all of the qualifications of this chapter.

B. Applicants may submit their completed application for a commercial franchise, as provided in RCMC 6.20.080, to the administrator for review and consideration at any time. The administrator shall review such submittals and either make a recommendation to the city council to award such franchise or notify applicant of denial within 60 days of receiving a completed application.

C. The administrator shall take into consideration all components of the completed application, including but not limited to:

1. The ability of the applicant to meet all terms of the agreement;
2. Any history of civil or criminal convictions that may compromise the public's interests;
and
3. The completeness, accuracy, and validity of the application.

The administrator shall also have the authority to verify independently any and all statements made and implied in the application. The administrator may also request clarification from applicant of any or all elements of the submitted application.

D. After the 60-day review period, the administrator shall either:

1. Deny an award and notify the applicant in writing of the reasons why the award was denied; or

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2. Recommend to the city council that a franchise be awarded.

E. Upon concurrence with a positive recommendation, the city council will award the franchise or will delegate authority to the administrator to award the franchise within a reasonable period of time. The administrator will notify applicant in writing of an award. [Ord. 23-2009 § B(9)].

Section 6.20.095 Residential franchise application review process.

A. The city council may award an exclusive franchise for the collection of residential solid waste and recyclables within the city to an applicant meeting all of the qualifications of this chapter.

B. Applicants may submit their completed application for a residential franchise, as provided in RCMC 6.20.080, to the administrator for review and consideration when the CITY has noticed its desire to receive such applications and according to the deadlines set forth by such notice. The administrator shall review applications and either make a recommendation to the city council to award such franchise or notify applicant of denial within 60 days of receiving a completed application.

C. The administrator shall take into consideration all components of the completed application, including but not limited to:

1. The ability of the applicant to meet all terms of the agreement;
 2. Any history of civil or criminal convictions that may compromise the public's interests;
- and
3. The completeness, accuracy, and validity of the application.
 4. The applicant's ability to provide the most efficient and cost effective collection service to CITY residents while minimizing the adverse effects of such service on the residents, CITY streets and rights-of-way, and the environment.

The administrator shall also have the authority to verify independently any and all statements made and implied in the application. The administrator may also request clarification from applicant of any or all elements of the submitted application.

D. After the 60-day review period, the administrator shall either:

1. Deny an award and notify the applicant in writing of the reasons why the award was denied; or
 2. Recommend to the city council that a franchise be awarded to a particular applicant;
- or
3. Recommend to the city council a group of finalists from which the city council may select an applicant to award an exclusive franchise to.

E. Upon concurrence with a positive recommendation, the city council will award the franchise or will delegate authority to the administrator to award the franchise within a reasonable period of time. The administrator will notify applicant in writing of an award.

Section 6.20.100 Appeal upon denial of award.

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A. Within 30 days of written notification of award denial or within 60 days of the administrator's failure to act on the commercial or residential franchise application, the applicant has the right to meet with the administrator to review the items cited in the written notice and provide any additional evidence to support an award. Within 15 days of such meeting, the administrator will make a final, written determination of the application, based on the reviews of additional evidence, together with the original application. Administrator will send a copy of all final, written determinations, including reasons for denial, if any, to both applicant and the city council.

B. Applicant may, within 10 days after receiving the administrator's final denial, request a public hearing before the city council by submitting to the city clerk a written petition for an appeal hearing. If a public hearing is requested, the city clerk shall set the matter for hearing at the next regularly scheduled city council meeting or any later date as agreed upon by the applicant and clerk of the city council. At such hearing, applicant may present evidence in writing and through testimony of its employees and others relevant to the application. During such hearing, the city council may demand from the applicant such additional information as the city council may deem relevant and necessary. Standard rules of evidence are not in effect at such public hearing, and the applicant shall have the burden of proof to show facts demonstrating that the applicant does in fact meet the requirements of this chapter. Any hearing may be continued or adjourned to a stated time and place without the giving of further notice. The city council will provide applicant with a written explanation of its determination on the application within 30 days of such hearing. The city council's decision is final.

C. If the term of an applicant's existing franchise expires while the application is under city review, the city council or the administrator may administratively extend the term for such period of time as is required to complete the appeal process.

Section 6.20.110 Awarding of franchise.

A. A commercial or residential franchise shall become effective only once the applicant and the city have signed a written agreement, and upon applicant's satisfying all of the requirements and conditions set forth in both this chapter and the franchise agreement.

B. The franchisee must provide to the city copies of all required certificates of insurance, and bonds as may be enumerated in the franchise agreement and this chapter. Should franchisee fail to maintain all such insurance and bonding requirements, uninterrupted for the term of the agreement, the city will immediately suspend or terminate the commercial or residential franchise.

C. If the franchisee's description of vehicles and equipment, as required under RCMC 6.20.080, has changed between the application date and the effective date of the franchise agreement, franchisee must submit to administrator an amended description, including all identification elements required under RCMC 6.20.080, prior to commencing services authorized in the agreement.

Section 6.20.120 Requirements for franchise effectiveness.

A franchise granted pursuant to this chapter shall not become effective unless and until all of the following requirements have been satisfied:

A. The ordinance granting the residential or commercial franchise, or the resolution granting the administrator the authority to grant the franchise, is effective.

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B. The applicant and the city have executed a franchise agreement.

C. Within 20 days from the date of adoption of the ordinance granting the commercial or residential franchise, or within 20 days of the date of adoption of the resolution delegating authority to the administrator to grant the franchise, the applicant to whom a franchise has been granted has filed with the city clerk evidence of compliance with the insurance requirements specified in the franchise agreement.

Section 6.20.130 Franchise fees.

A. Each person engaging in the business of collecting, transporting or disposing of commercial or residential solid waste and recyclables kept, accumulated or generated in CITY shall pay a franchise fee to CITY. The city council shall set the franchise fee by resolution, or shall delegate the authority to set the franchise fee to the City Manager by

B. The payment of franchise fees to the city pursuant to this section shall be in addition to any license fee or business tax prescribed by any local jurisdictions for the same period.

C. Commercial and residential solid waste franchise fees shall be payable on all gross collection revenues by a franchisee from its commercial or residential solid waste collection customers located within CITY. The franchise fee shall be calculated based on gross collection revenues prior to franchisee imposing the franchise fee on its customers. Non-exclusive franchisees shall also pay franchise fees on revenues received from federal and state government entities within CITY.

D. Franchise fees shall be payable by any person providing commercial or residential solid waste services within the city after the effective date of the ordinance codified in this chapter, even where no franchise has been granted.

Section 6.20.140 Recycling facility reporting requirements.

A. All recycling facilities within the city shall provide semi-annual written reports to the administrator, due 45 days after the close of the six-month reporting period, and including the following information for the previous six months:

1. The total aggregate tonnage of recyclable material received from generators located within the city;

2. The aggregate tonnage of recyclable material received from waste management and recycling operations in the city;

3. The aggregate tonnage of recyclable material received from franchises operating within the city; and

4. The total aggregate amount of residuals generated at the facility and disposed of at a permitted solid waste disposal facility, expressed as a percentage of total tonnage received.

B. To the extent permitted by the California Public Records Act, any report or other information required by this chapter shall be deemed confidential and shall not be subject to public disclosure except for aggregate totals for all facilities.

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C. Recycling facilities receiving only scrap metals, agricultural waste, inert materials, and/or discarded, whitecoated, major appliances that are not normally disposed of and thus cannot be counted towards the state's diversion requirements are exempt from the reporting requirements of this chapter.

Section 6.20.150 Restrictions on franchisees.

The following restrictions shall be applicable to franchisees:

A. Except to meet the two-truck requirement of RCMC 6.20.080(B)(3)(c), no franchisee shall, by contract, subcontract, or otherwise, share with another franchisee any office space associated with operations under a franchise.

B. No franchisee, by contract, express understanding or indirectly, shall, in cooperation with another franchisee, divide, segregate or apportion any territory within the city for the purpose of restricting competition within a particular territory.

C. No franchisee shall, directly or indirectly, enter into any contract, express understanding or other transaction with another franchisee for the purpose of fixing customer rates or charges or otherwise maintaining rates or charges at a particular level.

D. No franchisee or any director, officer, partner, joint venturer, sole proprietor or corporate owner thereof, shall be a controlling shareholder of, be a partner, joint venturer or sole proprietor, owner, have any other interest in or be employed by another franchisee. No franchisee which is owned in whole or in part by a corporation shall be effectively controlled by a person or entity by virtue of that person or entity's ownership of shares in the corporation, if the same person or entity otherwise controls another franchisee. The sole remedy for violation of the provisions of this subsection shall be revocation or refusal to renew a franchise.

E. Each franchisee shall provide to the administrator such information as the administrator determines is reasonably necessary to facilitate effective administration of the franchise under the provisions of this chapter. Diversion information may be provided consistent with the framework for materials recovery facility (MRF) services and reporting of RCMC 6.20.170.

F. Notwithstanding any other provisions of this chapter, it shall be allowable for a franchisee having an interest in a materials recovery facility (MRF) to provide a reporting service, a solid waste processing service, and/or a recyclables processing service to another franchisee consistent with the framework for MRF services and reporting of RCMC 6.20.170.

Section 6.20.160 Medical waste.

A. Commercial franchisees shall not be required to divert treated medical waste.

B. No treated medical waste from commercial or residential solid waste generators shall be delivered by a permittee to a materials recovery facility for the purpose of recycling.

Section 6.20.170 Enforcement.

Except as otherwise expressly provided, the provisions of this chapter shall be administered and enforced within the city by the administrator or other staff and enforcement officials designated by the administrator.

ATTACHMENT 2**Section 6.20.180 Abatement proceedings.**

Any operation or activity contrary to the provisions of this chapter or a franchise agreement, including the terms and conditions of any franchise, is unlawful and shall constitute a public nuisance. The administrator is authorized to commence in the name of the city actions or proceedings to abate and enjoin any such operation or activity.

Section 6.20.190 Notices.

A. Whenever a provision of this chapter authorizes or requires a public hearing to be conducted by the city council, notice of the time, date, place and purpose of the hearing shall be published at least once not later than 10 calendar days in advance of the date of such hearing in a newspaper of general circulation which is published within the city, and shall be served upon each franchisee who is affected by such hearing.

B. Any written notice or other communication to a franchisee which is authorized or required by this chapter shall be deemed served and effective for all purposes when deposited in the United States mail, postage prepaid, and addressed to the latest address of the franchisee shown in the city records pertaining to the franchise.

Section 6.20.200 On-site storage.

Every owner, tenant or occupant of a residential dwelling unit or multi-family residential property and every owner, operator or keeper of any business with a fixed location in the city which generates solid waste and/or recyclable materials shall provide and at all times keep within an enclosure, or conveniently located near an enclosure or building, water-tight containers for solid waste and suitable containers for recyclable materials, and shall cause to be deposited in such containers, and not elsewhere, all solid waste and/or recyclable materials which accumulate on the premises. The containers shall have tightly fitted covers and shall not leak or permit the escape of odors. Notwithstanding the requirements of this section, generators shall not be required to set out or store recyclable materials together with solid waste and generators shall be allowed to appropriately store recyclable materials for collection separate from solid waste. It shall be unlawful for any person to fail to comply with the requirements of this section. Containers shall be clearly identified with the name of the franchisee.

6.20.210 Solid waste disposal restrictions.

A. It shall be unlawful for any franchisee to do any of the following:

1. To operate or have an interest in a solid waste disposal site, other than a transfer, receiving and/or processing station, within the city;
2. To operate a solid waste disposal area in the city; or
3. To dump any solid waste upon, or permit the same to fall upon, any property, road or highway other than the areas designated by this chapter for the disposal or dumping of solid waste.

B. It shall be unlawful for any person to dump, deposit, or release any solid waste, rubbish, debris, garbage, trash, or recyclable materials in or on any public or private property, including streets, sidewalks, gutters, highways, or easements, except when acting in accordance with the solid waste collection regulations set forth in this chapter.

ATTACHMENT 2**Section 6.20.220 Use of containers.**

No person other than a customer who has contracted for service with a franchisee, or a person with such customer's consent, shall deposit solid waste into a solid waste bin, drop box or compactor placed in the city by a franchisee for the purpose of receiving solid waste.

Section 6.20.230 Rules and regulations.

A. The collection and subsequent transportation and disposal of commercial solid waste and recyclable materials within the city is under the supervision of the administrator who shall have the power to promulgate rules and regulations regulating such collection and subsequent transportation and disposal, including but not limited to:

1. Commercial solid waste generation, storage, recycling, recovery, accumulation, collection, removal, transportation and disposal;
2. The manner in which commercial solid waste collection and recycling services are provided;
3. Types of commercial solid waste and recycling containers and vehicles used therefor;
4. The operation and maintenance of sanitary methods of commercial solid waste disposal;
5. Reporting requirements for recycling facilities.

B. A copy of said rules and regulations and all amendments thereto shall be sent by registered or certified mail, postage prepaid, to all affected franchisees addressed to their last place of business. To the extent not otherwise provided by law, it shall be unlawful for a franchisee to collect and subsequently transport or dispose of commercial solid waste contrary to any regulation, order, permit or requirement promulgated by the administrator.

C. All such rules and regulations shall be consistent with the provisions of this chapter and shall be effective on the thirtieth day following the filing of any such rules and regulations with the city clerk.

D. Any person who asserts that he or she is aggrieved by the terms or application of a regulation issued pursuant to this section may appeal the issuance of such regulation by filing a written notice of appeal with the city clerk. The notice of appeal shall specifically identify the regulation or regulations from which the appeal is taken and the reasons for the appeal. Upon receipt of such notice, the city clerk shall schedule the appeal for a public hearing by the city council, notice of which shall be given in the manner prescribed by RCMC6.20.240. At the conclusion of the public hearing, the city council shall be vested with jurisdiction to deny the appeal or to rescind or modify the regulation. The city council's determination in this regard shall be final.

E. Any regulation from which an appeal is filed prior to its effective date shall not become effective until the date of a determination by the city council of the appeal. Any regulation from which an appeal is filed on or subsequent to the effective date thereof shall remain in full force and effect during the pendency of the appeal, and any decision that rescinds or modifies the regulation shall apply prospectively.

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F. It shall be unlawful and constitute a violation of this chapter for any person to violate or otherwise fail to comply with any rule or regulation issued pursuant to this section.

Section 6.20.240 Vehicle inspection.

A. All trucks and containers used in the collection, removal, transportation or storage of commercial solid waste in the city shall be subject to inspection by the city engineer for the purpose of determining whether or not the trucks and containers comply with California Code of Regulations, Title 14, Sections 17341 through 17345.

Section 6.20.250 Vehicle requirements.

A. The bodies of vehicles used in the collection, removal or transportation of commercial solid waste in the city shall have beds of metal or other impervious material which can be cleaned, and shall otherwise be of a type approved by the city engineer's department adopted pursuant to the California Code of Regulations, Title 14, Section 17341. B. The city engineer shall be authorized to issue administrative regulations pertaining to specifications for vehicles and containers, the cleansing and disinfecting thereof, and other sanitary measures in connection therewith.

Section 6.20.260 Covered load requirement.

A. All franchisee vehicles and all privately owned or operated vehicles using solid waste disposal facilities in the city shall have their vehicle loads covered, with a tarp or equivalent cover, to ensure protection from littering during transportation from the origin of the trip to any waste disposal facility located in the city.

B. All vehicles hauling materials with the load originating in the city to a waste disposal facility located outside of the city shall have their loads covered while in transit within the city.

C. Every permitted or nonpermitted waste disposal facility located within the city shall post signs notifying the public that it is illegal to haul uncovered loads to the facility. These facilities shall cooperate with the city enforcement staff by providing covered load education and promotion information to their customers to help assure the effectiveness of this chapter.

Section 6.20.270 Rights reserved to city.

In addition to all other rights reserved to the city under this chapter, the following shall apply:

A. There is hereby reserved to the city every right and power, and the exercise thereof, which is reserved or authorized by any provision of any lawful ordinance or resolution of the city, whether enacted before or after the effective date of the ordinance codified in this chapter.

B. Neither the granting of any franchise nor any provision of any franchise shall constitute a waiver of or a bar to the exercise of any governmental right or power of the city.

C. The franchisee shall have no recourse whatsoever against the city, its officers, employees or agents or any of the city member entities, their officers, employees, or agents for any loss, cost, expense or damage arising out of any provision or requirement of this chapter or of any franchise issued under this chapter or because of the enforcement of this chapter.

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D. There is hereby expressly reserved to the city the power and authority to amend any section of this chapter so as to require additional or greater standards on the part of the franchisee and the power and authority to increase the franchise fees to be paid by the franchisee pursuant to RCMC 6.20.150.

Section 6.20.280 Other franchise provisions.

A. The city council may expand or contract the scope of franchise agreements over time due to changes in law or interpretations of law.

Section 6.20.290 Criminal penalties for violations.

The following criminal penalties apply to violations of this chapter:

A. Violation as Misdemeanor. Unless otherwise specified by this chapter, violations of the provisions of this chapter or failure to comply with any of its requirements, including violations of terms and conditions established in connection with franchisees issued pursuant to this chapter, shall constitute a misdemeanor.

B. Penalty for Misdemeanor. Unless otherwise specified in this chapter, any person, whether as principal, agent, employee or otherwise, who violates this chapter or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$1,000 or imprisoned for not more than six months in the county jail, or by both such fine and imprisonment. Each day such violation continues shall be considered a separate offense. Such penalties shall be in addition to any late fees, civil penalties, administrative civil penalties, or other charges payable to the city by a franchisee for the same period of time or for the same violations.

C. Violation as Infraction. Unless otherwise specified by this chapter or the franchise agreement, the following violations by a franchisee are infractions:

1. Delinquent Payment of Franchise Fee. A delinquent payment of a franchise fee that is not received by the city before the first day of the month following the due date established under RCMC 6.20.150(B) is a violation and a separate violation for every month the payment remains delinquent thereafter.

2. Delinquent Payment of Franchise Fee Late Charge. A delinquent payment of a late payment charge and/or interest charges for a late franchise fee payment (under RCMC 6.20.150(F)) that is not received by the city before the first day of the month following the due date is a violation and a separate violation for every month the payment remains delinquent thereafter.

3. Delinquent Payment of Late Report Charge. A delinquent payment of a late charge for a delinquent quarterly report of diversion (under RCMC 6.20.170(F)) that is not received before the first day of the month following the due date is a violation and a separate violation for every month the payment remains delinquent thereafter.

4. Delinquent Payment of Audit Fee. A delinquent payment of an audit fee (under RCMC 6.20.210(B)) that is not received by the city before the first day of the month following the due date is a violation and a separate violation for every month the payment remains delinquent thereafter.

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5. Delinquent Diversion Report. A delinquent quarterly report of diversion (under RCMC 6.20.170) that is not received by the city before the first day of the third month following the end of the quarter reporting is a violation and a separate violation for every month the report remains delinquent thereafter.

6. Incomplete Diversion Report. If a quarterly report of diversion (under RCMC 6.20.170) that is received by the city is incomplete, the inadequacy must be remedied or corrected by the franchisee before the first day of the third month following the end of the quarter or it is a violation and a separate violation for every month the report remains incomplete thereafter. A complete quarterly report of diversion includes all information as may be required by the administrator. Partial quarterly reports of diversion will be considered incomplete.

D. Penalty for Infraction. Unless otherwise specified by this chapter or in the franchise agreement, an infraction is punishable by a fine not exceeding \$200.00 for a first violation of any offense under subsection (C) of this section within the preceding 12-month period; a fine of \$500.00 for a second violation of the same offense under subsection (C) of this section within the preceding 12-month period; and a fine of \$1,000 for each additional violation of the same offense under subsection (C) of this section within the preceding 12-month period. The administrator or the city attorney shall also have the discretion to elevate any infraction under subsection (C) of this section to a misdemeanor, punishable under subsection (B) of this section. Such penalties shall be in addition to any late fees, civil penalties, administrative civil penalties, or other charges payable to the city by a franchisee for the same period of time or for the same violation.

E. Separate Remedies. Each civil, criminal, or administrative civil penalty imposed pursuant to this chapter for any separate violation shall be separate from, and in addition to, any other provision of law and does not supersede or limit any and all other legal remedies and penalties, civil, administrative or criminal which may be applicable under other laws.

Section 6.20.300 Civil penalties for violations.

The following administrative civil penalties apply to violations of this chapter:

A. Administrative Civil Penalties. In addition to any other remedies provided by this chapter, any person who violates any provision of this chapter shall be liable for an administrative civil penalty to be imposed by the administrator. The amount of the penalty shall not be more than \$1,000 for each day of violation. Any person who knowingly violates any provision of this chapter, after reasonable notice of the violation, is liable for an administrative civil penalty of not more than \$1,000 for each day of violation. In determining the civil, criminal, and administrative civil penalties imposed pursuant to this chapter, all relevant circumstances shall be considered, including but not limited to the extent of harm or potential harm caused by the violation, the nature of the violation and the period of time over which it occurred, the frequency of past violations, and the corrective action, if any, taken by the violator.

B. Administrative Civil Penalty Procedure.

1. Notice of Violation. The administrator shall notify the violator in writing of the time within an alleged violation must be remedied or corrected. The notice shall provide that an administrative civil penalty will be imposed if the continuing violation is not remedied or corrected within the time stated.

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2. Notice of Penalty and Opportunity for Hearing. Notice of any administrative civil penalty shall set forth the alleged acts or failures to act that constitute a basis for liability and the amount of the proposed administrative civil penalty. The notice of administrative civil penalty shall be served by personal service or certified mail and shall inform the person so served that the administrative civil penalty imposed may be administratively reviewed by a city-designated hearing officer before it is enforced if a request for hearing is timely filed. The notice shall also specify the procedure for requesting a hearing before the hearing officer.

3. Administrative Review. If a person desires administrative review of the administrative civil penalty imposed by the administrator, it shall request a hearing by timely filing a written request pursuant to the provisions of RCMC 6.20.430. The written request for an appeal must be accompanied by an administrative hearing fee, as established by the city council. Any such appeal shall be in writing, shall state the specific reasons therefor and grounds asserted for relief, and shall be filed with the administrator not later than 15 calendar days after the date of service of any such decision. A hearing shall be conducted by the hearing officer pursuant to RCMC 6.20.440 unless the person has waived the right to a hearing or has entered into a settlement agreement with the administrator. A person waives the right to a hearing by so stating in writing or by failure to file with the administrator a written request for hearing within 15 days after service of the notice of opportunity for hearing.

4. Effective Date. Where the person has waived the right to a hearing or where the person has entered into a settlement agreement, the administrative civil penalty shall not be subject to review by any court, the hearing authority, or any other agency and shall be effective 15 days after notice of the penalty is served. Where a hearing has been held, the penalty shall be effective 20 days after the decision of the hearing authority becomes final.

5. Judicial Review. The manner of contesting the final order of the hearing officer concerning any administrative civil penalty is governed by Government Code Section 53069.4, or any successor provision thereto. Service of the notice of appeal authorized by Government Code Section 53069.4 upon the city shall be by service upon the city clerk.

6. Payment of Costs of Enforcement/Collection. In addition to any penalty, sanction, fine or imprisonment, each person who violates this chapter shall be required to pay any and all expenses of enforcement including costs necessary to bring the person into compliance with this chapter. In addition to all remedies contained herein, the city may pursue all reasonable and legal means in collecting those sums authorized and due.

7. Collection. Payment of the penalty shall be made within 30 days from when the penalty became effective. In addition to all remedies herein contained, the city may pursue all reasonable and legal means in collecting administrative civil penalties.

Section 6.20.310 Settlement process.

The administrator may adopt a written settlement agreement process for the settlement of violations of this chapter, which shall take into consideration the penalty factors set forth in RCMC 6.20.400.

Section 6.20.320 Hearing officer.

Whenever the term "hearing officer" is utilized in this chapter, it shall be deemed to refer to one or more qualified persons assigned the responsibility of conducting a hearing by the city manager.

ATTACHMENT 2**Section 6.20.330 Appeals.**

Any decision of the administrator may be appealed to a hearing officer appointed by the city manager. Any such appeal shall be in writing, shall state the specific reasons therefor and grounds asserted for relief, and shall be filed with the administrator not later than 15 days after the date of service of any such decision. If an appeal is not filed within the time or in the manner prescribed above, the right to review of the action against which complaint is made shall be deemed to have been waived.

Section 6.20.340 Appeal hearing.

A. Not later than 30 days following the date of filing an appeal within the time and in the manner prescribed by RCMC 6.20.430, the hearing officer shall conduct a hearing for the purpose of determining whether the appeal should be granted. Written notice of the time, date and place of the hearing shall be mailed to the appellant not later than 10 days preceding the date of the hearing.

B. The provisions of the California Administrative Procedure Act (commencing at Section 11500 of the Government Code) shall not be applicable to such hearings; nor shall formal rules of evidence in civil or criminal judicial proceedings be so applicable. Testimony shall be given under oath, and the parties to the hearing shall have the right to cross-examine witnesses. Any relevant evidence shall be admitted if it is the type of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rules which make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state. Hearsay evidence may be admitted for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions. Irrelevant and unduly repetitious evidence shall be excluded.

1. Record. A record of the entire hearing proceedings shall be made by either a certified court reporter or tape recorder operated by the hearing officer. A transcript of the proceedings shall be made available to all parties upon request and upon payment of the fee prescribed therefor. Such fees may be established and revised from time to time by the city council.

2. Scope. Only those matters or issues specifically raised by the appellant(s) in the written appeal shall be considered in the hearing on appeal.

3. Oaths and Certification. The hearing officer has the power to administer oaths and affirmations and to certify official acts.

4. Oral Evidence. Oral evidence shall only be taken on oath or affirmation.

5. Rights of Parties. Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues of the hearing even though the matter was not raised in the direct examination, to impeach any witness regardless of which party first called him or her to testify, to present rebuttal evidence and to represent himself or herself or to be represented by anyone of his or her choice who is lawfully permitted to do so. No appellant shall be required to testify without his or her consent.

6. At the conclusion of the hearing, the hearing authority shall prepare a written decision that either grants or conditionally grants or denies the appeal, and contains findings of fact

ATTACHMENT 2

and conclusions. Notice of the written decision, including a copy thereof, shall be filed with the administrator and served not later than 30 days following the date on which the hearing is closed on the appellant and on other persons who appeared at the hearing and requested a copy. Service shall be by personal delivery or certified mail.

C. City and appellant shall jointly pay for the costs of the hearing.

SECTION 3. Section 6.21.010, "Purpose and declarations," of the Rancho Cordova Municipal Code is hereby amended to read as follows:

Section 6.21.010 Purpose and declarations.

A. It is the intent and purpose of this chapter to promote recycling by:

1. Requiring covered generators in the city of Rancho Cordova to keep recyclable materials separate from all other solid waste for recycling;
2. Requiring covered generators to provide signs and labeled containers for the storage and collection of recyclable materials; and
3. Requiring covered generators to either self-haul or enter into a written service agreement for the collection and subsequent delivery of recyclable materials to a recycling facility.

B. It is further the purpose of this chapter to provide a mechanism to require the implementation of recycling programs for covered generators within the city to thereby enable the city to meet and maintain the 50 percent waste diversion requirements set forth in the Public Resources Code Section 41780(a)(2).

SECTION 4. Section 6.21.020, "Definitions," of the Rancho Cordova Municipal Code, is hereby amended to read as follows:

Section 6.21.020 Definitions.

A. "Authorization" means the process of approving a recycler for collection and removal of recyclable materials from businesses and multifamily residential properties by the public works director, and/or his or her designee.

B. "Authorized recycler" means any person or business entity who lawfully collects, accepts, transports or otherwise processes recyclable materials from businesses and multifamily properties for financial gain or profit, and has been certified and approved by the public works director, and/or his or her designee.

C. "Business" means:

1. A commercial entity, proprietorship, firm, partnership, person in representative or fiduciary capacity, association, venture, trust, or corporation that is organized for financial gain or profit, including but not limited to, offices, retail stores, markets, manufacturing facilities, warehouse and distribution facilities, restaurants, motels and hotels, theaters, medical offices, and gas stations and automotive facilities; and

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2. Not-for-profit organizations, including but not limited to, churches, hospitals, and social service organizations.

D. "Certificate of operation" means the license that an authorized recycler must obtain from the city before it may collect recyclable materials within city boundaries.

E. "City" means the city of Rancho Cordova, California.

F. "Collection" means the act of picking-up and removing solid waste or recyclable materials at the place of generation.

G. "Commercial hauler" or "hauler" means any person who collects, hauls, or transports commercial solid waste for a fee by use of any means, including but not limited to, a dumpster truck, roll-off truck, a side-load, front-load, or rear-load garbage truck, or a trailer.

H. "Commercial solid waste" means all solid waste as defined in subsection (CC) of this section that is generated by and at commercial and industrial sources, multifamily residential properties, and construction and demolition activities that is collected by a commercial hauler.

I. "Covered generator" means all businesses and multifamily residential properties that are subject to the requirements of this chapter. The public works director and/or his or her designee shall specify the minimum weekly solid waste collection service threshold that defines covered generators for the purposes of this chapter and shall include such designation in the commercial franchise agreement. A covered generator may include a business or multifamily residential property owner or generator and is dependent on whoever executes a contract(s) for solid waste removal and recycling collection services.

J. "Customer" means a business or multifamily residential property owner or generator who contracts for solid waste removal services and enters into a service agreement with a franchised waste hauler or authorized recycler for recycling services. Where several businesses or multifamily properties share garbage containers and service, "customer" refers only to the party who enters into a contract for solid waste collection services.

K. "Designated recyclable materials" means materials, as designated in the franchise agreement, that are required to be separated by covered generators from solid waste prior to disposal and returned for use or reuse in the form of raw materials for new, used or reconstituted products.

L. "Franchise" or "Commercial franchise" means a commercial solid waste and recyclables collection franchise issued to a commercial hauler by the city of Rancho Cordova.

M. "Franchisee or Franchised waste hauler" means a person or entity holding a commercial or residential franchise issued by the city pursuant to Chapter 6.20 RCMC.

N. "Generator" means each business or multifamily property that generates one or more designated recyclable materials as a result of its business activities or multifamily property activities.

O. "Multifamily residential property" means five or more individual living units located on a single parcel of land and any mobile home park located within the city.

ATTACHMENT 2

P. "National contracts" means contracts between waste management companies and multi-sited waste generating companies that operate currently throughout the United States, in more than one state.

Q. "Owner" means the person who owns a business or multifamily residential property. An owner may also be a generator.

R. "Person" means an individual, firm, limited liability company, association, partnership, industry, public or private corporation, or any other entity whatsoever.

S. "Public works director" means the public works director of the city of Rancho Cordova, California.

T. "Recycling" means the process of collecting, sorting, cleansing, treating and reconstituting materials that would otherwise become solid waste and returning them for use or reuse in the form of raw materials for new, used or reconstituted products which meet the quality standard necessary to be used in the marketplace. Recycling does not include transformation as defined in Public Resources Code Section 40201.

U. "Recycling facility" means those facilities or operations that receive, process, and transfer to market recyclable materials that have been source separated from the solid waste stream.

V. "Recyclable materials container" means any box, tub, cart, or other container placed inside each individual multifamily residential unit and in maintenance or work areas on the premises of covered generators that is made of metal, hard plastic or other similar material and is suitable for the collection of designated recyclable materials pursuant to this chapter. Recycling materials containers must be approved by the city.

W. "Recycling plan" means the plan to be presented to all covered generators by their franchised waste hauler to document understanding of the requirements of this chapter and record the selected compliance option for each designated recyclable material.

X. "Removal" means the act of taking solid wastes or recyclable materials from the place of generation.

Y. "Self-haul," when used in reference to designated generators by a covered generator, means a covered generator, or employee designated by the covered generator, who collects, transports and hauls recyclable materials from the business or multifamily residential property in a vehicle owned by either an employee or the entity to a recycling facility rather than hiring a franchised waste hauler or an authorized recycler to perform this function.

Z. "Self-hauling form" means the form provided by the public works director, and/or his or her designee, on which a business or multifamily residential property, owner or generator certifies that all self-hauling activities will be completed in accordance with the provisions of this chapter or any other applicable law or regulation.

AA. "Service agreement" means a written agreement between a franchised waste hauler or authorized recycler and a covered generator concerning the collection of designated recyclable materials.

ATTACHMENT 2

BB. "Solid waste" means all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, discarded home and industrial appliances, dewatered, treated or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semi-solid wastes, and other discarded solid and semi-solid wastes. Solid waste does not include hazardous waste or low-level radioactive waste regulated under Chapter 7.6 (commencing with Section 25800) of Division 20 of the Health and Safety Code or medical waste. Solid waste does not include recyclable materials set out for separate collection for the purposes of recycling and that are not land filled.

CC. "Source separate" or "source separated" means the process of removing recyclable materials from solid waste for the purpose of recycling.

DD. "Subcontract" is a contract assigning some of the obligations of a contract to a third party.

SECTION 5. Subdivision (A) of Section 6.21.030, "Requirements for covered generators," of the Rancho Cordova Municipal Code, is hereby amended to read as follows:

A. Each covered generator shall be responsible for ensuring and demonstrating its compliance with the following requirements:

1. Source separate designated recyclable materials from solid waste;
2. Provide a basic level of recycling service that includes, at a minimum, the collection of designated recyclable materials; and
3. Enter into a written service agreement with a franchised waste hauler or authorized recycler for the collection of designated recyclable materials; or
4. Complete and retain on-site a self-hauling form certifying that all self-hauling activities will be completed in accordance with the provisions of this chapter or any other applicable law or regulation. A copy of such form shall be made available to the public works director and/or his or her designee upon request; and
5. Complete a recycling plan and provide a signed copy to the franchised waste hauler providing solid waste collection services.

SECTION 6. Section 6.21.140, "Reporting," of the Rancho Cordova Municipal Code is hereby amended to read as follows:

Section 6.21.140 Reporting.

A. Franchised waste haulers' failure to file the reports required by this chapter or by the franchise agreement shall constitute cause for termination or suspension of its franchise pursuant to Chapter 6.20 RCMC.

B. Unless otherwise required by the franchise agreement, self-haulers shall prepare quarterly reports to be kept on site identifying, at a minimum, the following:

1. The recyclable materials tonnage collected and removed within the city region during the previous quarter.

ATTACHMENT 2

2. The location of the recycling facility(ies) to which the recyclable materials were taken during the previous quarter.

C. The public works director, and/or his or her designee, shall provide and establish guidelines, forms and other appropriate material to assist franchised waste haulers, authorized recyclers and self-haulers in preparing the reports required by this chapter.

SECTION 7. Subdivision (A) of Section 6.21.150, "Exemptions from recycling standards," is hereby amended to read as follows:

A. Notwithstanding any other provision herein, a business property owner or generator, shall be exempt from the requirements of this chapter if the owner or generator subscribes to less than four cubic yards of solid waste collection service per week.

SECTION 8. Severability. If any section, subsection, sentence, clause, phrase, or word of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction or preempted state legislation, such decision or legislation shall not affect the validity of the remaining portions of this Chapter. The City Council of the City of Rancho Cordova hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to any such decision or preemptive legislation.

SECTION 9. CEQA. The City Council finds that this Chapter is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060 (c)(2) (the activity will not result in direct or reasonably foreseeable indirect physical change in the environment) and 15060 (c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) because it has no potential for resulting in physical change to the environment, either directly or indirectly.

SECTION 10. Effective Date. Within fifteen (15) days after adoption, a summary of this Ordinance shall be published once in the Grapevine Independent or the Sacramento Bee, a newspaper of general circulation printed and published in Sacramento County and circulated in the City of Rancho Cordova, in accordance with Government Code section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its adoption.

Passed and adopted by the City Council of the City of Rancho Cordova this ____ day of _____, 2012, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Linda Budge, Mayor

ATTEST:

Mindy Cuppy, CMC, City Clerk
2011604.1

ATTACHMENT 3

RESOLUTION NO. 119-2012

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA
AUTHORIZING THE PUBLIC WORKS DIRECTOR TO ADMINISTER, NEGOTIATE, AND
EXECUTE NON-EXCLUSIVE COMMERCIAL SOLID WASTE AND RECYCLABLES
FRANCHISE AGREEMENTS, AND TO GRANT SUCH FRANCHISES**

WHEREAS, in December 2005, the City executed eleven (11) non-exclusive Commercial Solid Waste and Recyclables Collection Franchise Agreements; and

WHEREAS, in December 2006, the City extended the Commercial Franchises for one (1) year through December 31, 2007; and

WHEREAS, in December 2007, the City extended the Commercial Franchises for two (2) years through December 31, 2009; and

WHEREAS, in December 2009, the City extended the Commercial Franchises for three (3) years through December 31, 2012; and

WHEREAS, under Rancho Cordova Municipal Code Section 6.20.060(C), "City council authority to grant franchise," the city council may delegate by resolution the authority to the administrator to administer, negotiate and execute non-exclusive commercial solid waste collection franchise agreements; and

WHEREAS, under Rancho Cordova Municipal Code Section 6.20.120(C), "Requirements for franchise effectiveness," the city council may delegate by resolution the authority to the City's administrator to grant a non-exclusive commercial solid waste franchise; and

WHEREAS, in December, 2009, the city council adopted Resolution 121-2009, establishing the Public Works director as the administrator of the commercial solid waste collection franchises; and

WHEREAS, the City desires to make necessary amendments to its Non-Exclusive Commercial Franchise Solid Waste and Recyclables Collection Agreements to comply with new laws and regulations and to resolve conflicts between the agreements and the Municipal Code, to negotiate and execute such agreements, and to grant such franchises.

NOW THEREFORE, the City Council of the City of Rancho Cordova does hereby resolve as follows:

- A) The administrator, or Public Works director, is authorized to administer, negotiate, and execute non-exclusive commercial solid waste and recyclables collection franchise agreements. A copy of the amended agreement is attached hereto as **Exhibit A**.
- B) The administrator, or Public Works director, is authorized to grant non-exclusive commercial solid waste and recyclables collection franchise agreements by way of executing such agreements.

ATTACHMENT 3

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on this ____ day of _____, 2012 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Linda Budge, Mayor

ATTEST:

Mindy Cuppy, CMC, City Clerk

**COMMERCIAL NON-EXCLUSIVE SOLID WASTE AND RECYCLABLES COLLECTION FRANCHISE
AGREEMENT BETWEEN THE CITY OF RANCHO CORDOVA
AND (TO BE INSERTED)**

This Commercial Non-Exclusive Solid Waste and Recyclables Collection Franchise Agreement ("Agreement") is made and entered into this 1st day of January 2013, by and between the City of Rancho Cordova, a municipal corporation of the State of California, hereinafter referred to as "CITY", and _____, a California (to be inserted) _____ ("FRANCHISEE").

RECITALS

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939") (California Public Resources Code Section 40000 et seq.), has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for solid waste and recyclables handling within their jurisdictions; and

WHEREAS, CITY has determined that the public health, safety and welfare require that non-exclusive Franchises be awarded to qualified companies for the collection, transport, processing and disposal of commercial solid waste and recyclables in the CITY; and

WHEREAS, the Legislature has found and declared in Section 49510 of the Public Resources Code that it is in the public interest to foster and encourage solid waste and recyclables enterprise so that, at all times, there will continue to be competent enterprises willing and financially able to furnish needed solid waste and recyclables handling service; and

WHEREAS, one of the purposes of this Agreement is to regulate such non-exclusive Franchises in order to ensure the orderly collection, transportation, processing and disposal of commercial solid waste and recyclables in the CITY and to minimize the potential for adverse effects it may have on the local environment; and

WHEREAS, CITY requires all haulers, including governmental and public entities, providing commercial solid waste services in the CITY to obtain a non-exclusive Franchise in order to regulate this business, ensure its orderly operation and to minimize the potential for adverse effects it may have on the local environment; and

WHEREAS, FRANCHISEE has applied to CITY for a Commercial Solid Waste and Recyclables Collection Franchise; and

WHEREAS, the Public Works Director has reviewed FRANCHISEE'S application for the purpose of determining whether FRANCHISEE meets the requirements for the granting of such Franchise; and

WHEREAS, CITY has determined that the grant of such Franchise to FRANCHISEE is in the public interest; and

WHEREAS, CITY intends to receive value for the Franchise issued, which represents a toll or rental for the use of CITY streets and rights of way; and

WHEREAS, FRANCHISEE agrees to and acknowledges that it shall arrange for the proper disposal of all commercial solid waste and recyclables collected in the CITY and CITY is not instructing

FRANCHISEE how to collect, transport, process or dispose of commercial solid waste or recyclables so long as its operation is consistent with the City Municipal Code and all relevant State and Federal laws; and

WHEREAS, CITY and FRANCHISEE desire to enter into a Commercial Non-Exclusive Solid Waste and Recyclables Collection Franchise Agreement in order that FRANCHISEE may perform commercial solid waste and recyclables collection, transportation, processing and disposal services in the CITY.

NOW, THEREFORE, based on the mutual promises contained herein, the parties agree as follows:

Section 1. Definitions

For the purpose of this Commercial Non-Exclusive Solid Waste and Recyclables Collection Franchise Agreement, definitions contained in this Section shall apply unless otherwise specifically stated. If a word or phrase is not defined in this Section, the definition of such word or phrase as contained in the appropriate chapter of the Rancho Cordova Municipal Code ("RCMC") shall control. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Use of the masculine gender shall include the feminine gender.

a. "Business" means a commercial entity, proprietorship, firm, partnership, joint-stock company, person in representative or fiduciary capacity, association, venture, trust, or corporation that is organized for financial gain or profit, including but not limited to, offices, retail stores, markets, industrial facilities, schools, school districts, manufacturing facilities, warehouse and distribution facilities, restaurants, motels and hotels, theaters, medical offices, gas stations and automotive facilities; and not-for-profit organizations, associations and entities, including but not limited to, churches, hospitals, and social service organizations.

b. "CITY" means the City of Rancho Cordova, California and all the territory lying within its boundaries as presently existing or as such boundaries may be modified during the term of this Agreement.

c. "Collection" means the act of picking up, transporting and removing Commercial Solid Waste and Recyclable Materials from the place of generation.

d. "Commercial Non-Exclusive Collection Services" means Commercial Non-exclusive Solid Waste Collection Service and Commercial Non-Exclusive Recycling Collection Service.

e. "Commercial Non-Exclusive Recycling Collection Service" means the Collection of Commercial Recyclable Materials in the CITY by a FRANCHISEE and the transportation and processing of those Recyclable Materials.

f. "Commercial Non-Exclusive Solid Waste Collection Service" means the Collection of Commercial Solid Waste in the CITY by a FRANCHISEE and the transportation, processing and disposal of that Commercial Solid Waste.

g. "Commercial Solid Waste" means Solid Waste that is generated by a Business or Multi-Family Residential Property and Collected at such Business or Multi-Family Residential Property.

h. "Covered Generator" means a Business that generates four (4) or more cubic yards of Commercial Solid Waste per week or is a Multi-Family Residential Property of five (5) or more dwelling units.

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i. "Customer" means a Business or Multi-Family Residential Property owner who contracts for Commercial Collection Services and enters into a Service Agreement with a FRANCHISEE. Where several Business or Multi-Family Residential Properties share containers and Commercial Non-Exclusive Collection Services, "Customer" refers only to the party whom enters into a Service Agreement for Commercial Non-Exclusive Collection Services.

j. "Designated Recyclable Materials" means materials, as designated by the Public Works Director and/or his or her designee, that are required to be separated by Covered Generators from Commercial Solid Waste prior to disposal and returned for use or reuse in the form of raw materials for new, used or reconstituted products. Such materials include, but are not limited to those materials set forth in subsection "o" below.

k. "Franchise", "Franchise Agreement" or "Agreement" means this written document and all amendments thereto between CITY and FRANCHISEE governing the provision of Commercial Non-Exclusive Collection Services as provided herein, including all exhibits hereto, as it may be amended from time to time.

l. "FRANCHISEE" means a business which has entered into a Franchise Agreement with CITY to provide Commercial Non-Exclusive Collection Services.

m. "Multi-Family Residential Property" means five (5) or more residential dwelling units located on a single parcel of land and any mobile home park located within the City.

n. "National Contracts" means contracts between waste management companies and multi-sited waste generating companies that operate currently throughout the United States , in more than one state.

o. "Recyclable Materials" means those materials which are capable of being recycled and which would otherwise be processed or disposed of as Commercial Solid Waste. These materials will be as defined by CITY from time to time. Recyclable Materials currently include: newsprint (including inserts); mixed paper (including magazines, catalogs, envelopes, junk mail, corrugated cardboard, Kraft brown bags and paper, paperboard, paper egg cartons, and telephone books); glass containers; aluminum beverage containers; small scrap and cast aluminum (not exceeding ten (10) pounds in weight for any single item); steel including "tin" cans and small scrap (not exceeding ten (10) pounds in weight for any single item); bimetal containers; mixed plastics such as plastic bags, plastic film, plastic containers (1-7), and bottles including containers made of HDPE, LDPE, PET, or PVC; aseptic containers; polystyrene; wood pallets and non-treated and unpainted wood scraps; and those materials added by FRANCHISEE or CITY from time to time.

p. "Recyclable Material Container" means any box, tub, cart, bin, or other container provided by FRANCHISEE that is made of metal, hard plastic or other similar material, is suitable for Collection of Recyclable Materials and is approved by CITY.

q. "Recycling Plan" means the plan to be obtained from all Customers that are Covered Generators by FRANCHISEE to document understanding of all requirements of California Mandatory Commercial Recycling Law and Chapter 6.21 of the Rancho Cordova Municipal Code and record the selected compliance option of each designated material.

r. "Service Agreement" means a written agreement between FRANCHISEE and a Covered Generator or Customer concerning the provision of Commercial Non-Exclusive Collection Services.

s. "Solid Waste" means all putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, construction and demolition debris, discarded home and industrial appliances, dewatered, treated or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semi-solid wastes, and other discarded solid and semi-solid wastes. Solid Waste does not include hazardous waste or low-level radioactive waste regulated under Chapter 7.6 (commencing with Section 25800) of Division 20 of the Health and Safety Code, or medical waste. Solid Waste does not include Recyclable Materials that are set out for separate Collection for the purposes of recycling, and that are not landfilled.

t. "Source Separate" or "Source Separated" means the process of removing Recyclable Materials from Solid Waste for the purpose of recycling.

Section 2. Grant of Non-Exclusive Franchise.

a. CITY hereby grants to FRANCHISEE a non-exclusive Commercial Solid Waste and Recyclables Collection Franchise authorizing FRANCHISEE to engage in the business of Collecting, transporting, processing, and disposing of Commercial Solid Waste and Recyclable Materials kept, accumulated or generated in CITY and to use the public streets and rights of way for such purpose.

b. This grant is pursuant to FRANCHISEE's application for the Franchise, which application is incorporated herein by this reference.

Section 3. Acceptance of Franchise.

a. FRANCHISEE hereby accepts the Franchise on the terms and conditions set forth in this Agreement, Chapters 6.20 and 6.21 of the Rancho Cordova Municipal Code, and all related ordinances and resolutions. Execution of this Agreement shall not constitute the notification required by Public Resources Code Section 49520.

Section 4. Term of Franchise.

a. Subject to Section 29 of this Agreement, the term of the Franchise granted to FRANCHISEE shall be from the date first indicated above through December 31, 2017.

b. In the event CITY offers to extend the term of this Agreement, and FRANCHISEE intends to accept such offer, FRANCHISEE shall provide CITY with updated application information identifying all material changes since the submission of the initial application or the last application update no later than one hundred and twenty (120) days prior to the end of the term of this Agreement.

c. In the event CITY offers to extend the term of this Agreement, either CITY or FRANCHISEE may give notice of a desire to negotiate material changes to this Agreement no later than one hundred twenty (120) days prior to the end of the term of this Agreement, and the parties agree to negotiate in good faith regarding such proposed changes.

Section 5. Conditions for Effectiveness.

The effectiveness of this Agreement is subject to FRANCHISEE's satisfaction of each and all of the conditions set forth below, each of which may be waived, in writing, in whole or in part by CITY.

- a. Accuracy of Representations. The representation and warranties made by FRANCHISEE in its Application for Franchise are true and correct on and as of the effective date.
- b. Absence of Litigation. There is no litigation pending on the effective date in any court challenging the award or execution of this Agreement or seeking to restrain or enjoin its performance.
- c. Furnishing of Insurance. FRANCHISEE has furnished evidence of the Insurance required by Section 17 of this Agreement.

Section 6. Limitations on Scope of Franchise.

Under the terms of this Franchise, FRANCHISEE has the authority to Collect only Commercial Solid Waste and Recyclable Materials from Businesses and Multi-Family Residential Properties and to provide drop-box service to all generators.

Section 7. Franchise Fees.

- a. During the term of the Franchise, FRANCHISEE shall pay to CITY franchise fees for the privilege of using CITY streets and public rights-of-way to engage in the business of providing Commercial Non-Exclusive Solid Waste and Recyclables Collection Services in CITY.
- b. Franchise fees shall be a percentage of all gross revenues, less franchise fees received from Customers, including those Customers that are state or federal agencies or entities located within CITY, for the provision of Commercial Non-Exclusive Solid Waste and Recyclables Collection Service. The franchise fee shall be calculated based on gross collection revenues prior to FRANCHISEE imposing the franchise fee on its Customers.
- c. The franchise fee percentage shall be ten 10 percent (10%) or such other amount that may be adopted at any time during the term of this Agreement by a resolution of the City Council, or by the City Manager if the City Council has delegated such authority to the City Manager by resolution.
- d. All FRANCHISEES, including public entities engaged in the provision of Commercial Non-Exclusive Collection Services, shall pay the franchise fee as set forth herein, or such other franchise fees as may be set forth in any subsequent resolution adopted by the City Council.
- e. FRANCHISEE shall pay franchise fees on revenue generated from all Commercial Solid Waste and Recycling collected pursuant to this Agreement regardless of the method of disposal or handling.

Section 8. Franchise Fee Payment.

- a. Franchise fees shall be payable on a monthly basis, and shall be due and payable on the first day of the second month immediately following the month in which collection revenue is received. Each payment shall be calculated in accordance with the provisions of this Agreement and the Rancho Cordova Municipal Code.

b. The franchise fee shall be paid to the Public Works Director at the address set forth in Section 8(f) of this Agreement. Each payment shall be accompanied by a "gross revenue form," verified by the person making the payment, or a duly authorized representative of the person, showing the calculation of the franchise fee payable in such form and detail as the Public Works Director may require and such other information as the Public Works Director may determine is material to a determination of the amount due.

c. If no revenue subject to the franchise fee is collected during a given month, the gross revenue form must still be submitted to the Public Works Director in the manner described in Section 8(b) of this Agreement.

d. No statement filed under this Section shall be conclusive as to the matters set forth in such statement, nor shall the filing of such statement preclude CITY from collecting by appropriate action the sum that is actually due and payable.

e. If franchise fees are not paid by FRANCHISEE in the time and manner described in this Section 8 of this Agreement, then in addition to the franchise fees, FRANCHISEE shall pay a late payment charge in an amount equal to fifty dollars (\$50.00), plus two percent (2%) of the franchise fee that is due, plus interest equal to one and one-half percent (1.5%) for each month in which the franchise fee was not timely paid.

f. FRANCHISEE shall pay all required franchise fees to:
City of Rancho Cordova
Attn: Public Works Director
2729 Prospect Drive
Rancho Cordova, CA 95670

g. If FRANCHISEE remits franchise fees by personal delivery to CITY, such franchise fees shall be deemed timely paid only if delivered on or before the due date. If FRANCHISEE remits franchise fees by mail or other delivery service, such franchise fees shall be deemed timely only if: (1) the envelope containing the franchise fee payment bears a postmark or receipt showing that the payment was mailed or sent on or before the due date; or (2) FRANCHISEE submits proof satisfactory to CITY'S Public Works Director that the franchise fee payment was in fact deposited in the mail or sent on or before said due date.

h. In the event FRANCHISEE believes that it has paid franchise fees in excess of the fees due to CITY, FRANCHISEE may submit a request for refund to the Public Works Director on a form provided by said Public Works Director. If proof of overpayment is satisfactory to the Public Works Director, the Public Works Director shall refund to FRANCHISEE any overpayment. FRANCHISEE shall not apply any overpayment as a credit against any franchise fees or other amounts payable to CITY unless specifically so authorized by the Public Works Director in writing.

Section 9. Ownership of Commercial Solid Waste and Recyclable Materials.

CITY does not gain any ownership or right to possess Commercial Solid Waste or Recyclable Materials Collected by FRANCHISEE pursuant to this Agreement. Subject to the provisions of this Agreement, FRANCHISEE shall have the right to retain any benefit resulting from its right to retain, recycle, process, dispose of, or use the Commercial Solid Waste or Recyclable Materials that it Collects pursuant to the terms of this Agreement.

Section 10. Disposal and Processing of Commercial Solid Waste and Recyclable Materials.

FRANCHISEE shall dispose of or process Commercial Solid Waste or Recyclable Materials Collected or transported by FRANCHISEE only by taking such Commercial Solid Waste or Recyclable Materials to a landfill, transfer station, recycling facility or materials recovery facility of FRANCHISEE'S choice, which is lawfully authorized to accept such Commercial Solid Waste and/or Recyclable Materials. FRANCHISEE shall not dispose of such Commercial Solid Waste or Recyclable Materials by depositing it on any land, whether public or private, or in any river, stream or other waterway, or in any sanitary sewer or storm drainage system.

Section 11. Mandatory Business and Multi-Family Residential Recycling

The intent and purpose of the Section is to comply with the State Mandatory Commercial Recycling Law and the CITY'S Business and Multi-Family Recycling Ordinance established in Chapter 6.21 of the Rancho Cordova Municipal Code.

a. Requirements for FRANCHISEE.

- (1) FRANCHISEE shall offer collection service and automatic lift containers, bins or roll-off bins for Recyclable Materials sufficient to accommodate the quantity and type of Designated Recyclable Material to all its Commercial Solid Waste Customers.
- (2) FRANCHISEE shall equip and provide automatic lift containers, bins and roll off bins for Recyclable Materials. Upon request from CITY or commercial Customer, FRANCHISEE shall provide locks and/or other suitable features to prevent theft of recyclable materials.
- (3) FRANCHISEE shall place CITY approved signage on all automatic lift containers, bins and roll bins for Recyclable Materials.
- (4) FRANCHISEE shall offer containers, bins, and/or reusable bags to be used at the point of disposal sufficient to contain Recyclable Materials generated on the Customer's site.
- (5) FRANCHISEE shall not take a Customer's Recyclable Materials to a landfill or other disposal site, but to a recycling facility.
- (6) FRANCHISEE, upon request, shall provide the Public Works Director, and/or his or her designee, with a copy of a Service Agreement, Recycling Plan or other document (e.g., receipt from a Recycling Facility) demonstrating that the Covered Generator's Recyclable Materials are being taken to a recycling facility. The Service Agreement, Recycling Plan or other documents shall be available for inspection by the Public Works Director, and/or his or her designee, at FRANCHISEE'S place of business during normal business hours.
- (7) CITY staff, or their agent, may audit all FRANCHISEE'S records as set forth in Section 16 of this Agreement.

Section 12. Service Agreements.

a. FRANCHISEE shall execute a written Service Agreement with all Customers before FRANCHISEE provides Commercial Non-Exclusive Collection Services. Service Agreements shall incorporate, but are not limited to, the following terms and conditions:

- (1) Be clearly labeled as a Service Agreement;
- (2) Describe the Commercial Collection Services to be provided by FRANCHISEE, the frequency and hours of such services, and the cost for providing such services to the Customer;
- (3) Clearly state the initial term and renewal terms;
- (4) Any term that is mutually agreed upon by the Customer and FRANCHISEE, but recognizing that this Franchise Agreement must remain in full force and effect throughout the term of the Service Agreement;
- (5) Automatic renewal for successive periods of no longer than one (1) year, unless either party gives written notice of termination by certified or registered mail at least sixty (60) days prior to the termination date of the current Service Agreement;
- (6) A term allowing for amendments as mutually agreed upon by the Customer and FRANCHISEE;
- (7) Require that Customers are to receive a written notice of price increases not less than thirty (30) days prior to the effective date of such price increase;
- (8) FRANCHISEE shall respond to Customer inquiries regarding the Service Agreement within thirty (30) days;
- (9) Require that Collection Containers be removed from the property of a Customer by FRANCHISEE within thirty (30) days of final termination of services to the Customer;
- (10) Include language stating that Customers will be notified in writing within thirty (30) days of termination of this Franchise Agreement;
- (11) Not require Customers to pay over three (3) months liquidated damages during the renewal term and over six (6) months liquidated damages during the initial term of the Service Agreement;
- (12) Not require Customers to give FRANCHISEE the exclusive right to provide Commercial Non-Exclusive Recycling Collection Service as a condition of a Service Agreement, unless the Customer affirmatively indicates that this is its desire;
- (13) Not require Customers to give notice of any offer by a competitor or require Customers to give FRANCHISEE the right to respond to such offer; and
- (14) Include language stating that the Service Agreement shall automatically terminate upon the termination of this Franchise Agreement.

b. The requirements for Service Agreements contained in this Section shall be incorporated into all new Service Agreements executed on or after January 1, 2013. Existing Service Agreements between FRANCHISEE and a Customer executed before January 1, 2013 shall remain in force for the remainder of the existing contract and shall be governed by the terms and conditions specified in the existing Service Agreement, provided that such existing Service Agreements shall comply, to the extent allowable by law, with the new recycling programs established by this Franchise Agreement and California Law.

c. National contracts or agreements are exempt from the requirements of contract length and renewal terms.

Section 13. Recycling Plans.

- a. The Public Works Director, and/or his or her designee, shall provide a Recycling Plan template to FRANCHISEE to be used to document compliance with this Section for each Covered Generator.
- b. FRANCHISEE shall obtain a signed Recycling Plan from each Covered Generator prior to providing Commercial Non-Exclusive Solid Waste Collection Service to that Covered Generator.
- c. FRANCHISEE shall review, complete, and sign the Recycling Plan obtained from each Customer that is a Covered Generator in accordance with Section b. above.
- d. FRANCHISEE shall maintain a copy of each completed Recycling Plan, and submit it to the Public Works Director, and/or his or her designee, for audit purposes within five (5) days of receipt of a written request.
- e. Audit of Recycling Plans. During the term of this Agreement, CITY may perform or cause to be performed up to two (2) Recycling Plan audits. If FRANCHISEE services more than four (4) Covered Generators, FRANCHISEE shall be responsible for the cost of the two (2) Recycling Plan audits if requested by CITY. Except as set forth in this Section, FRANCHISEE'S cost of the two (2) audits shall be limited to a total of Ten Thousand Dollars (\$10,000.00). If a Recycling Plan audit determines that more than ten percent (10%) of the Recycling Plans are incomplete or inaccurate, CITY may request a follow-up audit within twelve (12) months and FRANCHISEE will be responsible for all additional cost associated with the follow-up audit.

Section 14. Requirements for Public Outreach and Education Plan to Covered Generators.

- a. In the event FRANCHISEE will provide Commercial Non-Exclusive Solid Waste and Recyclables Collection Services to more than four (4) Covered Generators annually, FRANCHISEE shall prepare an annual (calendar year) Public Education and Outreach Plan and submit the plan to CITY for approval. CITY shall review the plan and meet with FRANCHISEE to finalize the plan. FRANCHISEE shall, at its own expense, implement the approved annual (calendar year) Public Education and Outreach Plan. The proposed public outreach and education plan must be submitted for CITY approval no later than February 1, 2013 for the 2013 Contract Year and by October 1, 2013 for the 2014 Contract Year, and annually, by October thereafter. Franchisee must submit an annual report to CITY regarding the activities undertaken pursuant to the Public Education and Outreach Plan, per Section 15(e) of this Agreement.

Section 15. Reports

- a. FRANCHISEE shall file with the Public Works Director the following reports:
 - (1) Quarterly Tonnage Report that contains the quantities of Commercial Solid Waste and Recyclable Materials Collected, transported, processed, diverted, and/or disposed. Such report shall be in such form and detail as required by the Public Works Director. Specifically, the report shall contain, but not be limited to, the following information:
 - i. The Commercial Solid Waste and Recyclable Materials tonnage Collected and removed within the CITY by FRANCHISEE during the previous quarter;

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- ii. The Commercial Solid Waste and Recyclable Materials tonnage Collected and removed during the previous quarter within the CITY by FRANCHISEE that was diverted and the location of the facility(ies) where such Commercial Solid Waste and Recyclable Materials were diverted; and
- iii. The Commercial Solid Waste and Recyclable Materials tonnage Collected and removed within the CITY by FRANCHISEE that was disposed of during the previous quarter and the location of the disposal facility where the disposal of such Commercial Solid Waste and Recyclable Materials occurred.

(2) Quarterly Business and Multi-Family Property Recycling Hauler Status Report that contains the status of Covered Generators. Such report shall be in form and detail as required by the Public Works Director. Specifically, the report shall contain, but not be limited to, the following information segregated by commercial and multi-family residential property accounts:

- i. The total number of Covered Generators in the CITY, which are Customers of FRANCHISEE, that are in compliance with California's Mandatory Commercial Recycling Law and the Rancho Cordova Municipal Code for which a completed Recycling Plan is on file;
- ii. The total number of Covered Generators that are Customers of FRANCHISEE in CITY;
- iii. The total number of Covered Generators, which are Customers of FRANCHISEE in the CITY, that have completed a Recycling Plan but remain in violation of California's Mandatory Commercial Recycling Law and the Rancho Cordova Municipal Code for any reason;
- iv. The total weekly cubic yardage of Non-Exclusive Solid Waste Collection Service and Non-Exclusive Recyclable Materials Collection Service provided to Covered Generators that are Customers of FRANCHISEE in CITY during the reporting period; and
- v. A List of all Covered Generators, which are Customers of FRANCHISEE in the CITY, which includes, but is not limited to each customer's:
 - a. Billing Contact;
 - b. Billing Address;
 - c. Billing Contact Phone Number;
 - d. Service Contact;
 - e. Service Address;
 - f. Service Contact Phone Number;
 - g. Container size and frequency of Collection of Non-Exclusive Solid Waste Collection Service;
 - h. Container size and frequency of Collection of Non-Exclusive Recyclable Materials Collection Service; and
 - i. Status of Recycling Plan.

b. FRANCHISEE shall maintain quarterly records, on forms approved by the Public Works Director, containing such information as may be required by the Public Works Director pertaining to the

number and types of accounts served by FRANCHISEE under the terms of this Agreement. This information shall be provided to Public Works Director upon request.

c. If the quarterly reports required under Section 15(a) of this Agreement are not filed by the due date, the report shall be deemed delinquent, and FRANCHISEE shall pay to CITY a delinquent report charge in the amount of fifty dollars (\$50.00) per day. If the report remains delinquent for more than fifteen (15) days, FRANCHISEE shall pay to CITY a delinquent report charge in the amount of one hundred dollars (\$100.00) per day. Such delinquent report charge shall be in addition to any franchise fees or other charges payable by FRANCHISEE for the same period of time.

d. Each quarterly report shall be submitted on or before the first day of the second calendar month immediately following the reportable quarter and shall be submitted as provided in Section 31 of this Agreement. Quarterly reports shall be submitted in a form and format approved by CITY.

e. Annual Public Outreach and Education Report. On or before February 1, 2014 and annually thereafter, FRANCHISEE shall submit to CITY an annual report describing the public education and information activities undertaken during the year pursuant to its Public Outreach and Education Plan under Section 15 of this Agreement, including distribution of outreach material, community information and events, and other activities related to public outreach and education. Annual reports shall be submitted in a form and format approved by CITY.

f. If the annual report required under Section 15(e) of this Agreement is not filed by the due date, the report shall be deemed delinquent, and FRANCHISEE shall pay to CITY a delinquent report charge in the amount of fifty dollars (\$50.00) per day. If the report remains delinquent for more than fifteen (15) days, FRANCHISEE shall pay to CITY a delinquent report charge in the amount of one hundred dollars (\$100.00) per day. Such delinquent report charge shall be in addition to any franchise fees or other charges payable by FRANCHISEE for the same period of time.

g. The Public Works Director shall establish guidelines, forms and other appropriate material to assist FRANCHISEE in preparing the reports required by this Section. FRANCHISEE's failure to file the reports required by this Section shall constitute cause for termination or suspension of its Franchise pursuant to the Rancho Cordova Municipal Code and Section 29 of this Agreement.

h. To the extent permitted by the California Public Records Act, any reports, plans, and information required by this Agreement shall be deemed confidential and shall not be subject to public disclosure except for each franchisee's aggregate totals.

Section 16. Inspection Authority.

a. FRANCHISEE shall at all times maintain accurate and complete accounts of all revenues and income arising out of its operations under this Franchise Agreement and the information needed to complete the forms and reports required by Sections 8 and 15 of this Agreement. FRANCHISEE'S books, accounts and records reasonably necessary for the enforcement of this Franchise Agreement shall be made available for inspection, examination and audit during normal business hours by authorized officers, employees and agents of CITY. CITY shall give FRANCHISEE written notice at least three (3) business days prior to any inspection, audit or examination of these records.

b. Where the Public Works Director determines that an audit is necessary to verify the accuracy, or completeness of reported franchise fees, tonnages or diversion data, FRANCHISEE shall be responsible for reimbursement of audit costs, including any CITY staff time or consultant services, to perform such audit.

c. FRANCHISEE shall be responsible for reimbursement of audit costs for CITY staff, and any other consultant services, to perform detailed follow-up audits where staff determines that documentation of, franchise fees, tonnage, diversion or other data, as reported by FRANCHISEE, is inadequate, incomplete or inaccurate. Where necessary, CITY staff will retain the services of an independent consultant to verify performance and conduct any necessary diversion audits.

Section 17. Insurance Requirements.

FRANCHISEE shall obtain and shall maintain throughout the term of this Agreement, at FRANCHISEE's sole cost and expense, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of work pursuant to this Agreement by FRANCHISEE, its agents, representatives, employees or contractors.

a. Minimum Scope and Limits of Insurance. FRANCHISEE shall maintain at least the following minimum insurance coverage:

- (1) *Comprehensive General Liability:* \$3,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit.
- (2) *Automobile Liability:* \$3,000,000 combined single limit per accident for bodily injury and property damage. Coverage shall include hired autos and non-owned autos.
- (3) *Workers' Compensation and Employers Liability:* Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$3,000,000 per accident.
- (4) Hazardous Waste and Environmental Impairment Liability Insurance \$3,000,000 per occurrence.

b. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be described in FRANCHISEE'S application for this Franchise, or in such other manner as is acceptable to CITY. If FRANCHISEE desires to change its deductible or self-insured retention after the effective date of this Agreement, it shall first obtain approval of CITY's Risk Manager for these increases. FRANCHISEE shall be responsible for payment of all deductibles or self-insured retentions.

c. Other Insurance Provisions. The required insurance policies are to contain, or be endorsed to contain, the following provisions:

- (1) General Liability and Automobile Liability Coverage.
 - i. CITY, its officers, employees, agents and contractors are to be covered as an additional insured as respects: liability arising out of activities performed by, or on behalf of FRANCHISEE; products and completed operations of FRANCHISEE; premises owned, leased or used by FRANCHISEE; and automobiles owned, leased, hired or borrowed by FRANCHISEE. The coverage shall contain no

special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.

- ii. FRANCHISEE'S insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of FRANCHISEE'S insurance and shall not contribute with it.
 - iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officers, employees, agents or contractors.
 - iv. Coverage shall state that FRANCHISEE'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (2) *All Coverage*. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY.

d. Placement of Insurance. Insurance shall be placed with insurers acceptable to CITY'S Risk Manager. FRANCHISEE must place insurance with a current A.M. Best rating of no less than A: VII. CITY'S Risk Manager may waive or alter this requirement, in writing, or accept self-insurance in lieu of any required policy of insurance if, in the opinion of the Risk Manager, the interests of CITY and the general public are adequately protected.

e. Proof of Insurance. FRANCHISEE shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Proof of insurance shall be mailed or personally delivered to the address provided in Section 31 of this Agreement.

f. Acknowledgment. FRANCHISEE acknowledges that the Commercial Solid Waste and Recyclables Collection Franchise granted to FRANCHISEE will not become effective, and FRANCHISEE will have no authority to perform Commercial Non-Exclusive Collection Services in the CITY, unless FRANCHISEE provides satisfactory proof of insurance prior to beginning operations as a FRANCHISEE.

g. Modification of Insurance Requirements. CITY shall retain the right at any time to review the coverage, form and amount of the insurance required hereby. If, in the opinion of the CITY'S Risk Manager, the insurance provisions in this Agreement do not provide adequate protection for CITY and for members of the public, CITY may require FRANCHISEE to obtain insurance sufficient in coverage, form and amount to provide adequate protection. CITY'S requirements shall be reasonable but shall be imposed to assure protection from and against the kind and extent of risks that exist at the time a change in insurance is required. CITY'S Risk Manager may modify these insurance requirements only upon approval of the City Council.

Section 18. Indemnity.

a. FRANCHISEE agrees to defend, with counsel agreed upon by both parties, indemnify, and hold harmless CITY and its agents, officers, contractors, servants, public officials, volunteers, and employees from and against any and all claims asserted, costs, the cost of remediation and cost recoveries pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, losses and

EXHIBIT A
CONTRACT NO. XX-20XX

damages, liabilities, expenditures or causes of action of any kind (including negligent, reckless, willful or intentional acts or omissions of the FRANCHISEE, its employees, agents, subcontractors, supplier, or any person or organization directly or indirectly employed by any of them to perform or furnish any services or anyone for whose acts any of them may be liable), or injuries to any person or property, including injury to CITY employees, agents or officers which arise from, or are connected with, or are caused or claim to be caused by acts or omissions of FRANCHISEE, or their agents, officers or employees, in the performance of the non-exclusive Franchise or this Agreement, or in performing the work or services therein, and all costs and expenses of investigating and defending against same; provided, however, that FRANCHISEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its agents, officers, servants and employees.

b. Hazardous Substances Indemnification. FRANCHISEE agrees to defend, with counsel agreed upon by both parties, indemnify, and hold harmless CITY and its agents, officers, contractors, servants, officers, volunteers, and employees from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages), injuries, costs (including, without limit, any and all 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 without limit attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity providing the enforcement action is successful in establishing indemnification), (collectively, "Damages") of any kind whatsoever paid, incurred or suffered by, or asserted against, indemnities arising from or attributable to the acts or omissions of FRANCHISEE, its officers, directors, employees, companies, or agents, whether or not negligent or otherwise culpable, in connection with or related to the performance of this contract, including without limit damages arising from or attributable to any operations, repair, clean-up or detoxification, or preparation and implementation of any removal, remedial, response, closure, post-closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous substance, Hazardous Waste, and/or Household Hazardous Waste (collectively, "Waste") at any places where FRANCHISEE transfers, transports, processes, stores or disposes of Solid Waste or other waste collected under this contract. The indemnity afforded indemnitees shall only be limited to exclude coverage for intentional wrongful acts and active negligence of indemnitees. The foregoing indemnity is intended to operate as an agreement pursuant to §107(e) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §9607(e), and California Health and Safety Code §25364, to defend, protect, hold harmless, and indemnify CITY from liability. Nothing in this provision shall prevent FRANCHISEE from seeking indemnification or contribution from persons or entities other than indemnitees, for any liabilities incurred by the FRANCHISEE, or the indemnitees.

c. Indemnification for Failure to Meet AB 939 Goals. FRANCHISEE agrees to protect and defend CITY, with counsel selected by FRANCHISEE and CITY, to pay all attorneys' fees, and to indemnify and hold CITY harmless from and against all fines or penalties imposed by CalRecycle if the diversion goals specified in the California Public Resources Code Section 41780 as of the date hereof and hereafter throughout are not met by CITY with respect to the Materials Collected by FRANCHISEE and if the lack in meeting such goals are attributable to the failure of the FRANCHISEE to implement and operate the recycling or diversion plans and/or programs or related activities required by this contract. Such indemnification of CITY by FRANCHISEE shall be proportionate to FRANCHISEE'S degree of fault for the penalty or fine imposed, as required under Public Resources Code § 40059.1.

Section 19. Equipment.

a. Any and all containers provided to covered generators by FRANCHISEE for storage, collection or transportation of Commercial Solid Waste or Recyclable Materials shall meet the requirements of the Rancho Cordova Municipal Code and applicable California laws.

b. Any and all vehicles used by FRANCHISEE to perform Commercial Non-Exclusive Collection Services shall meet the requirements of the Rancho Cordova Municipal Code and applicable California laws.

c. All collection equipment and vehicles used by FRANCHISEE shall have appropriate safety markings including, but not limited to, highway lighting, flashing and warning lights, clearance lights, and warning flags. All such safety markings shall be subject to the approval of the CITY and shall be in accordance with the requirements of the California Vehicle Code, as may be amended from time to time.

d. Each FRANCHISEE shall maintain collection equipment and vehicles in a clean condition and in good repair at all times, to the satisfaction of CITY.

e. FRANCHISEE shall insure that all Collection vehicle loads are covered while in transit and shall not litter premises in the process of providing Commercial Non-Exclusive Collection Services or while its vehicles are on the road. FRANCHISEE shall transport all materials Collected under the terms of this Agreement in such a manner as to prevent the spilling or blowing of such materials from the FRANCHISEE'S vehicles. FRANCHISEE shall exercise all reasonable care and diligence in providing Commercial Non-Exclusive Collection Services so as to prevent spilling or dropping of Commercial Solid Waste or Recyclable Materials and shall immediately, at the time of occurrence, clean up such spilled or dropped materials.

Section 20. Abandoned Containers.

a. If FRANCHISEE abandons any container used to provide Commercial Non-Exclusive Collection Services, CITY, or its designated agent may remove the container and/or dispose of the contents of the container.

b. If CITY or its designated agent removes a container abandoned by FRANCHISEE and/or disposes of the contents of any container abandoned by FRANCHISEE, CITY may charge FRANCHISEE for CITY'S costs incurred in such removal/disposal and for CITY'S costs of storage of the container. FRANCHISEE shall reimburse CITY for such costs within ten (10) days of the date of CITY'S invoice for such costs.

- c. For the purposes of this Section, "abandoned" includes:
- (1) FRANCHISEE'S failure to remove the container within the time period specified by the City Council upon termination of the Commercial Solid Waste and Recyclables Collection Franchise;
 - (2) FRANCHISEE's failure to remove the container within a reasonable period after the expiration of this Agreement except in the case where FRANCHISEE has been granted an extension of the term of this Agreement or FRANCHISEE has been granted a subsequent Commercial Solid Waste and Recyclables Collection Franchise authorizing FRANCHISEE to Collect and transport the type or types of Commercial

Solid Waste and Recyclable Materials for which the container was used pursuant to this Agreement.

- (3) FRANCHISEE'S failure to dispose of the contents of the container within five (5) days after the Public Works Director issues written notice to FRANCHISEE to dispose of the contents.

Section 21. Franchisee Provided Commercial Solid Waste and Recyclables Containers.

a. General. Containers used for storage of Commercial Solid Waste and Recyclable Materials shall be designed and constructed to be watertight and prevent the leakage of liquids. All containers shall be painted and shall prominently display the name of FRANCHISEE.

b. Cleaning, Painting, Maintenance. FRANCHISEE shall make reasonable efforts to replace, clean or repaint all containers as needed so as to present a clean appearance.

Section 22. Signs.

FRANCHISEE shall have permanently displayed in a prominent place on the exterior of each truck utilized in the Collection, removal or transportation of Commercial Solid Waste or Recyclable Materials under this Agreement a sign which contains such information as is required by regulation of the city engineer adopted pursuant to the provisions of the California Code of Regulations, Title 14, Section 17344.

Section 23. Personnel.

a. Driver Qualifications. FRANCHISEE agrees that all drivers shall be trained and qualified in the operation of collection vehicles and must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.

b. Safety Training. FRANCHISEE shall provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment for collection of commercial solid waste and recyclables, or who are otherwise directly involved in such collection.

Section 24. Local Office.

FRANCHISEE shall at all times maintain a central office within CITY, or within the metropolitan area immediately adjacent to CITY, where representative of FRANCHISEE can be reached by telephone 9:00 a.m. through 5:00 p.m., Mondays through Fridays, legal holidays excepted. Such office shall have a local telephone number so that Customers served by the FRANCHISEE may contact the FRANCHISEE without the necessity of making a long distance telephone call.

Section 25. Compliance with Law.

FRANCHISEE shall perform all Collection, transportation and disposal operations in accordance with applicable federal, state, and local law, including CITY Ordinances, in accordance with all regulations promulgated under such laws, and in accordance with the terms and conditions of this Agreement.

Section 26. Permits and Licenses.

FRANCHISEE shall obtain and maintain, at FRANCHISEE'S sole cost and expense, all permits and licenses applicable to FRANCHISEE'S operations under this Agreement required of FRANCHISEE by any governmental agency.

Section 27. Administrative Charges

It shall be the duty of FRANCHISEE to perform services under this Agreement in such a manner as to ensure that services are of the highest caliber. In the event FRANCHISEE fails to perform the services set forth in this Agreement, CITY may assess administrative charges against FRANCHISEE in the following amounts:

a.	Failure to clean up spillage or litter caused by CONTRACTOR.	1 st violation \$200.00; 2 nd violation \$500.00; 3 rd violation \$1,000.00*
b.	Failure to maintain equipment in a clean, safe, and sanitary manner.	1 st violation \$200.00; 2 nd violation \$500.00; 3 rd violation \$1,000.00*
c.	Failure to have a vehicle operator properly licensed.	1 st violation \$200.00; 2 nd violation \$500.00, 3 rd violation \$1,000.00
d.	Failure to properly cover materials in Collection vehicles.	1 st violation \$200.00; 2 nd violation \$500.00; 3 rd violation \$1,000.00
e.	Failure to return CITY or CITY's representative calls, e-mails or correspondence two or more times within thirty (30) consecutive days	\$200.00 per occurrence
f.	Disposal of Recyclable Materials in a disposal facility or landfill without first obtaining the written permission of CITY.	\$500.00 per occurrence
g.	Failure to deliver any Collected materials to a disposal facility, materials recovery facility, or green waste processing facility, as appropriate, except as otherwise expressly provided in this Agreement.	\$5,000.00 first failure \$25,000.00 each subsequent failure
h.	Failure to submit complete and correct information or reports on time.	\$50.00 per day for 1 – 15 days delinquent \$100.00 per day greater than 15 days delinquent.
i.	Maintaining an incomplete or inaccurate Recycling Plan.	\$50.00 per plan
j.	Failure to prepare a Recycling Plan for a Customer that is a Covered Generator.	\$1,000.00 per incident
k.	Failure to comply with the requirements of this Agreement or Rancho Cordova Municipal Code not specified in items a. through j.	\$250.00 per incident

Section 28. Changes in Law.

CITY and FRANCHISEE understand and agree that the California Legislature has the authority to make comprehensive changes in Solid Waste Management legislation and that these and other changes in law in the future which mandate certain actions or programs for counties or municipalities may require CITY to make changes or modifications in some of the terms, conditions or obligations under this Agreement. FRANCHISEE agrees that the terms and provisions of the Rancho Cordova Municipal Code, as it now

exists or as it may be amended in the future, shall apply to all of the provisions of this Agreement and the Customers of FRANCHISEE located within the CITY.

Section 29. Default, Termination.

a. Default. Except for the occurrence of Force Majeure, in the event of any material failure or refusal of FRANCHISEE to comply with any obligation or duty imposed on FRANCHISEE under this Agreement or the Rancho Cordova Municipal Code, the Public Works Director and FRANCHISEE shall meet and confer in good faith in an effort to agree on a resolution and cure of the breach. If the parties are unable to agree on the informal resolution or cure of the breach within ten (10) business days, the City Council shall have the right to terminate this Agreement if:

- (1) Following the ten (10) day meeting period described above, the Public Works Director shall have given written notice to FRANCHISEE specifying that a particular default or defaults exists which will, unless corrected, constitute a material breach of this Agreement on the part of FRANCHISEE, and
- (2) FRANCHISEE fails to correct such default or fails to take reasonable steps to commence to correct such default within thirty (30) days from the date of the notice given by the Public Works Director under Section a. (1) above and FRANCHISEE thereafter fails to diligently continue to take reasonable steps to correct such default.

b. The following events shall also constitute a material breach and default under this Agreement:

- (1) *Misrepresentation.* Any misrepresentation or disclosure made to CITY by FRANCHISEE in connection with or as an inducement to entering this Agreement or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time the representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.
- (2) *Fraud or Deceit.* If FRANCHISEE practices, or attempts to practice, any fraud or deceit upon CITY.
- (3) *Failure to Maintain Coverage.* If FRANCHISEE fails to provide or maintain in full force and effect the Worker's Compensation, liability, or indemnification coverage as required by this Agreement.
- (4) *Violations of Regulation.* If FRANCHISEE violates any permits, orders or filing of any regulatory body having jurisdiction over FRANCHISEE which violation or non-compliance materially affects FRANCHISEE'S ability to perform under this Agreement, provided that FRANCHISEE may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the Franchise shall be deemed to have occurred during the pendency of the contestation or appeal, to the extent FRANCHISEE is able to adequately perform during that period.
- (5) *Acts or Omissions.* Any other act or omission by FRANCHISEE which materially violates the terms, conditions, or requirements of this Agreement, Rancho Cordova Municipal Code, AB 939, 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 FRANCHISEE cannot reasonably correct or remedy the breach within the time set forth in such notices, if FRANCHISEE should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

- (6) *Termination of Service.* In the case of a breach related to the above Sections b. (1) through (5), and the breach continues for more than thirty (30) calendar days after written notice from the Public Works Director for the correction thereof, provided that where such breach cannot be cured within such thirty (30) day period, FRANCHISEE shall not be in default of this Agreement if FRANCHISEE shall have commenced such action required to cure the particular breach within ten (10) calendar days after such notice, and it continues such performance diligently until completed.

c. Termination. Upon the occurrence of a material breach, the City Council shall have the right to terminate this Agreement. In the event FRANCHISEE fails to cure the material breach specified in a written notice from the Public Works Director, then failure to cure may result in a declaration of termination of this Agreement by CITY.

d. Force Majeure. The performance of this Agreement may be discontinued or temporarily suspended in the event of Force Majeure. FRANCHISEE shall not be deemed to be in default and shall not be liable for failure to perform under this Agreement if FRANCHISEE'S performance is prevented or delayed by Force Majeure. For purposes of this Section, Force Majeure means acts of God including landslides, lightening, forest fires, storms, floods, freezing and earthquakes, civil disturbances, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, public riots, breakage, explosions, or government restraint. Notwithstanding anything to the contrary herein, CITY and FRANCHISEE agree that the settlement of strikes, lockouts or other industrial disturbances, and litigation, including appeals, shall be entirely within the discretion of FRANCHISEE and FRANCHISEE may make settlement thereof at such time and on any such terms and conditions as it may deem to be advisable, and no delay in making such settlement shall deprive FRANCHISEE of the benefit of this Section.

e. The Public Works Director shall serve written notice, either personally or by registered or certified mail, postage prepaid of the termination of a Franchise under this Agreement to the last place of business of FRANCHISEE and FRANCHISEE shall cease operation under its Franchise within ten (10) calendar days.

Section 30. Conditions Upon Termination.

- a. In the event this Agreement is terminated:
- (1) FRANCHISEE shall have no right or authority to provide Commercial Non-Exclusive Collection Services in CITY.
 - (2) FRANCHISEE shall, however, remain liable to CITY for any and all franchise fees that would otherwise be payable by FRANCHISEE, for any and all late payment charges and interest assessed pursuant to Section 8 of this Agreement and for any and all delinquent report charges assessed pursuant to Section 15 of this Agreement.
 - (3) FRANCHISEE shall have a continuing obligation to submit to CITY all reports and forms required by Sections 8 and 15 of this Agreement that relate to Commercial Non-Exclusive Collection Services performed by FRANCHISEE up to and including the date of termination.

b. In the event this Agreement is terminated, then within the time period specified by the City Council and if directed by the Public Works Director, FRANCHISEE shall remove all of FRANCHISEE'S Commercial Solid Waste and Directed Recyclable Materials containers from all of FRANCHISEE'S Non-

Exclusive Collection Service locations and shall properly dispose or process all Commercial Solid Waste and Directed Recyclable Materials in such containers.

Section 31. Notices.

Except as otherwise provided in this Agreement, all notices required by this Agreement shall be given by personal service or by deposit in the United States mail, postage pre-paid and return receipt requested, addressed to the parties as follows:

To CITY: Cyrus Abhar, Director of Public Works
City of Rancho Cordova
2729 Prospect Park Drive
Rancho Cordova, CA 95670

To FRANCHISEE: XXXXX
XXXXX
XXXXX

Notice shall be deemed effective on the date personally served or, if mailed, three days after the date deposited in the mail, unless otherwise specified in this Agreement.

Section 32. Relationship of Parties

The parties intend that FRANCHISEE shall perform the services required by this Agreement as an independent contractor and not as an officer or employee of CITY nor as a partner or joint venturer with CITY. No employee or agent of FRANCHISEE shall be deemed to be an employee or agent of CITY and shall not obtain any rights to retirement benefits, worker's compensation benefits, or any other benefits which accrue to the employees of CITY by virtue of their employment with said agency. Except as expressly provided herein, FRANCHISEE shall have the exclusive control over the manner and means of conducting the Commercial Non-Exclusive Collection Services performed under this Agreement and all persons performing such services. FRANCHISEE shall be solely responsible for the acts and omissions of its officers, employees, subcontractors and agents.

FRANCHISEE agrees that this Agreement is not made in the interest of, or on behalf of, any undisclosed person, partnership, Franchisee, association, organization, or corporation. FRANCHISEE has not directly or indirectly colluded, conspired, connived or agreed with any person, partnership, FRANCHISEE, association, organization, or corporation to secure any advantage against CITY.

Section 33. Compliance with Law

In providing the services required under this Agreement, FRANCHISEE shall at all times, at its sole cost, comply with all applicable laws of the United States, the State of California, CITY and other states, or counties which may have jurisdiction over any service provided in this Agreement and with all applicable regulations promulgated by any federal, state, regional or local administrative and regulatory agency, now in force and as they may be enacted, issued or amended during the term of this Agreement.

Section 34. Governing Law

This Agreement, and all rights, obligations, duties, and liabilities pursuant to it, shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

Section 35. Jurisdiction

The parties agree that any litigation concerning or arising out of this Agreement shall be filed and maintained exclusively in the Municipal or Superior Courts of Sacramento County, State of California, or in the United States District Court for the Eastern District of California to the fullest extent permissible by law. With respect to venue, the parties agree that this Agreement is made in and will be performed in the CITY. Each party consents to service of process in any manner authorized by California law.

Section 36. Assignment

a. FRANCHISEE acknowledges that this Franchise Agreement involves rendering a vital service to the businesses within CITY, and that CITY has franchised FRANCHISEE to perform the services specified herein based on: (1) FRANCHISEE'S experience, skill and reputation for conducting its Commercial Non-Exclusive Collection Services in a safe, effective and responsible fashion, at all times in keeping with applicable waste management laws, regulations and good Commercial Solid Waste and Directed Recyclable Materials management practices; and (2) FRANCHISEE's financial resources to maintain the required equipment and to support its indemnity obligations to CITY under this Agreement. CITY has relied on each of these factors, among others, in choosing FRANCHISEE to perform the services to be rendered by FRANCHISEE under this Agreement.

b. Any Franchise granted is a privilege to be held in trust by the original FRANCHISEE. This Franchise Agreement shall not be transferred, sold, leased, assigned, or relinquished, or delegated to another person, either in whole or in part, whether by forced sale, merger, consolidation, bankruptcy laws or otherwise, without the prior approval of the City Council. This restriction includes the transfer of ownership of FRANCHISEE, or a majority of the ownership or control of FRANCHISEE, or the conveyance of a majority of FRANCHISEE's stock to a new controlling interest. This Agreement shall become void upon the abandonment of same by FRANCHISEE. The City Council shall not unreasonably withhold approval of a Franchise assignment, provided that such assignment does not unreasonably impact competition and the assignee is qualified to perform its obligations as required by this Franchise Agreement and any implementing CITY ordinance.

c. FRANCHISEE shall promptly notify the Public Works Director in writing in advance of any proposed assignment, sale, or transfer. In the event the City Council approves of any assignment, sale, or transfer, said approval shall not relieve FRANCHISEE of any of its obligations or duties under this Agreement unless this Agreement is modified in writing to that effect.

Section 37. Binding on Successors

The provisions of this Agreement shall inure to the benefit to and be binding on the successors and permitted assigns of the parties.

Section 38. Waiver

The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision.

The subsequent acceptance by either party of any monies, which become due hereunder, shall not be deemed to be a waiver of any preexisting or concurrent breach or violation by the other party of any provision of this Agreement.

Section 39. FRANCHISEE'S Investigation

FRANCHISEE has made an independent investigation, satisfactory to it, of the conditions and circumstances surrounding the Agreement and the work to be performed by it.

Section 40. Entire Agreement

This Agreement, including any Exhibits, represents the full and entire Agreement between the parties with respect to the matters covered herein.

Section 41. Interpretation

This Agreement shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting.

Section 42. Amendment

This Agreement may not be modified or amended in any respect except by a written agreement duly approved and signed by the parties.

Section 43. Severability

If any nonmaterial provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement, which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above

CITY OF RANCHO CORDOVA

FRANCHISEE

Cyrus Abhar, Public Works Director_____
[NAME, TITLE]

Date: _____

Date: _____

Attest:

Mindy Cuppy, CMC, City Clerk

Date: _____

Approved as to Form:

Adam Lindgren, City Attorney

Date: _____

MEMORANDUM



DATE: December 17, 2012

TO: Mayor and Council Members

FROM: Cyrus Abhar, Public Works Director

SUBJECT: ORDINANCE AMENDING CHAPTERS 6.20 AND 6.21 OF THE RANCHO CORDOVA MUNICIPAL CODE CONCERNING SOLID WASTE AND RECYCLING; AND RESOLUTION GRANTING THE PUBLIC WORKS DIRECTOR THE AUTHORITY TO NEGOTIATE AND EXECUTE NON-EXCLUSIVE COMMERCIAL FRANCHISE AGREEMENTS FOR SOLID WASTE COLLECTION

RECOMMENDATION

1. Introduce and waive the first reading of Ordinance No. 22-2012.
2. Adopt Resolution No. 119-2012.

RESULT OF RECOMMENDED ACTION

Adoption of this Ordinance will repeal unnecessary Sacramento County Code provisions on solid waste from the City's Code, which were previously incorporated by reference, and will amend Rancho Cordova Municipal Code chapters 6.20 and 6.21 on solid waste and recycling. These changes will resolve conflicts between the Code and commercial franchise agreements for solid waste collection and reflect changes in State law concerning recycling. Adoption of this Resolution will give the Public Works Director the authority to negotiate and execute non-exclusive commercial solid waste and recycling collection agreements, and to grant the franchises, as allowed under the Municipal Code.

ADVANCES GOALS 1, 2, and 5.

BACKGROUND AND SUMMARY

Upon incorporation in 2003, the City Council adopted two ordinances (20-2003 and 21-2003) which incorporated numerous chapters of the Sacramento County Code ("SCC"), including SCC chapter 6.20 on solid waste. Subsequent ordinances adopted by the City Council established the City's own code provisions on solid waste and recycling (Rancho Cordova Municipal Code chapters 6.20 and 6.21). Staff recommends repeal of certain SCC provisions previously adopted by the City. This will ensure clarity and resolve conflicts between the City's code and the residential and commercial franchise agreements. Staff also recommends revisions of chapters 6.20 and 6.21 of the Rancho Cordova Municipal Code concerning solid waste and recycling.

The amendments to sections of chapters 6.20 and 6.21 include the deletion of numerous sections which are now included in, and more appropriately covered by, the commercial

franchise agreements. The franchise agreements now include additional insurance and indemnification provisions, and updated language pertaining to the State's new mandatory commercial recycling law (AB 341), which took effect July 1, 2012. The new law requires local businesses and multi-family residential properties (five units or more) that produce a minimum of four (4) cubic yards of solid waste per week to subscribe to recycling services.

The code amendments also clarify that the city council may authorize the Public Works Director to negotiate and execute the non-exclusive commercial solid waste and recycling collection franchise agreements. The City currently has ten (10) commercial franchise agreements. Approval of the Resolution allows the Public Works Director to negotiate and execute the commercial franchise agreements, which are set to expire December 31, 2012. **A copy of the amended commercial franchise agreement, which shall serve as the base template for negotiation is included as Attachment 4.**

Additionally, a provision requiring mandatory solid waste service for residential and commercial properties located within the City has been added to the code. Finally, the code amendments add procedures for reviewing and granting an exclusive residential solid waste collection franchise consistent with current practice.

FISCAL IMPACT

Section 6 of the Commercial Solid Waste and Recyclables Collection Franchise Agreement requires franchisees to pay a ten percent (10%) franchise fee on gross revenues received for commercial solid waste collection services provided within the City. The 10 percent (10%) franchise fee generates revenue in the range of \$35,000 per month, or \$420,000 per year, paid by the franchisees to the City. The proposed Agreements will not affect the anticipated franchise fee revenue.

MOTIONS

1. "I move that the City Council introduce and waive the first reading of Ordinance No. 22-2012."
2. "I move that the City Council adopt Resolution No. 119-2012."

ATTACHMENTS

1. Courtesy copy of Chapter 6.20 showing amendments
2. Ordinance No. 22-2012
3. Resolution No. 119-2012; ~~including Exhibit A — Commercial Franchise Agreement (amended)~~
4. **Amended Commercial Franchise Agreement**

RESOLUTION NO. 119-2012

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA
AUTHORIZING THE PUBLIC WORKS DIRECTOR TO ADMINISTER, NEGOTIATE, AND
EXECUTE NON-EXCLUSIVE COMMERCIAL SOLID WASTE AND RECYCLABLES
FRANCHISE AGREEMENTS, AND TO GRANT SUCH FRANCHISES**

WHEREAS, in December 2005, the City executed eleven (11) non-exclusive Commercial Solid Waste and Recyclables Collection Franchise Agreements; and

WHEREAS, in December 2006, the City extended the Commercial Franchises for one (1) year through December 31, 2007; and

WHEREAS, in December 2007, the City extended the Commercial Franchises for two (2) years through December 31, 2009; and

WHEREAS, in December 2009, the City extended the Commercial Franchises for three (3) years through December 31, 2012; and

WHEREAS, under Rancho Cordova Municipal Code Section 6.20.060(C), "City council authority to grant franchise," the city council may delegate by resolution the authority to the administrator to administer, negotiate and execute non-exclusive commercial solid waste collection franchise agreements; and

WHEREAS, under Rancho Cordova Municipal Code Section 6.20.120(C), "Requirements for franchise effectiveness," the city council may delegate by resolution the authority to the City's administrator to grant a non-exclusive commercial solid waste franchise; and

WHEREAS, in December, 2009, the city council adopted Resolution 121-2009, establishing the Public Works director as the administrator of the commercial solid waste collection franchises; and

WHEREAS, the City desires to make necessary amendments to its Non-Exclusive Commercial Franchise Solid Waste and Recyclables Collection Agreements to comply with new laws and regulations and to resolve conflicts between the agreements and the Municipal Code, to negotiate and execute such agreements, and to grant such franchises.

NOW THEREFORE, the City Council of the City of Rancho Cordova does hereby resolve as follows:

- A) The administrator, or Public Works director, is authorized to administer, negotiate, and execute non-exclusive commercial solid waste and recyclables collection franchise agreements. ~~A copy of the amended agreement is attached hereto as Exhibit A.~~
- B) The administrator, or Public Works director, is authorized to grant non-exclusive commercial solid waste and recyclables collection franchise agreements by way of executing such agreements.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on this ____ day of _____, 2012 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Linda Budge, Mayor

ATTEST:

Mindy Cuppy, CMC, City Clerk

**COMMERCIAL NON-EXCLUSIVE SOLID WASTE AND RECYCLABLES COLLECTION FRANCHISE
AGREEMENT BETWEEN THE CITY OF RANCHO CORDOVA
AND (TO BE INSERTED)**

This Commercial Non-Exclusive Solid Waste and Recyclables Collection Franchise Agreement ("Agreement") is made and entered into this 1st day of January 2013, by and between the City of Rancho Cordova, a municipal corporation of the State of California, hereinafter referred to as "CITY", and _____, a California (to be inserted) _____ ("FRANCHISEE").

RECITALS

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939") (California Public Resources Code Section 40000 et seq.), has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for solid waste and recyclables handling within their jurisdictions; and

WHEREAS, CITY has determined that the public health, safety and welfare require that non-exclusive Franchises be awarded to qualified companies for the collection, transport, processing and disposal of commercial solid waste and recyclables in the CITY; and

WHEREAS, the Legislature has found and declared in Section 49510 of the Public Resources Code that it is in the public interest to foster and encourage solid waste and recyclables enterprise so that, at all times, there will continue to be competent enterprises willing and financially able to furnish needed solid waste and recyclables handling service; and

WHEREAS, one of the purposes of this Agreement is to regulate such non-exclusive Franchises in order to ensure the orderly collection, transportation, processing and disposal of commercial solid waste and recyclables in the CITY and to minimize the potential for adverse effects it may have on the local environment; and

WHEREAS, CITY requires all haulers, including governmental and public entities, providing commercial solid waste services in the CITY to obtain a non-exclusive Franchise in order to regulate this business, ensure its orderly operation and to minimize the potential for adverse effects it may have on the local environment; and

WHEREAS, FRANCHISEE has applied to CITY for a Commercial Solid Waste and Recyclables Collection Franchise; and

WHEREAS, the Public Works Director has reviewed FRANCHISEE'S application for the purpose of determining whether FRANCHISEE meets the requirements for the granting of such Franchise; and

WHEREAS, CITY has determined that the grant of such Franchise to FRANCHISEE is in the public interest; and

WHEREAS, CITY intends to receive value for the Franchise issued, which represents a toll or rental for the use of CITY streets and rights of way; and

WHEREAS, FRANCHISEE agrees to and acknowledges that it shall arrange for the proper disposal of all commercial solid waste and recyclables **generated by commercial premises** collected in the

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CITY and CITY is not instructing FRANCHISEE how to collect, transport, process or dispose of commercial solid waste or recyclables so long as its operation is consistent with the City Municipal Code and all relevant State and Federal laws; and

WHEREAS, CITY and FRANCHISEE desire to enter into a Commercial Non-Exclusive Solid Waste and Recyclables Collection Franchise Agreement in order that FRANCHISEE may perform commercial solid waste and recyclables collection, transportation, processing and disposal services in the CITY.

NOW, THEREFORE, based on the mutual promises contained herein, the parties agree as follows:

Section 1. Definitions

For the purpose of this Commercial Non-Exclusive Solid Waste and Recyclables Collection Franchise Agreement, definitions contained in this Section shall apply unless otherwise specifically stated. If a word or phrase is not defined in this Section, the definition of such word or phrase as contained in the appropriate chapter of the Rancho Cordova Municipal Code ("RCMC") shall control. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Use of the masculine gender shall include the feminine gender.

a. "Business" means a commercial entity, proprietorship, firm, partnership, joint-stock company, person in representative or fiduciary capacity, association, venture, trust, or corporation that is organized for financial gain or profit, including but not limited to, offices, retail stores, markets, industrial facilities, schools, school districts, manufacturing facilities, warehouse and distribution facilities, restaurants, motels and hotels, theaters, medical offices, gas stations and automotive facilities; and not-for-profit organizations, associations and entities, including but not limited to, churches, hospitals, and social service organizations.

b. "CITY" means the City of Rancho Cordova, California and all the territory lying within its boundaries as presently existing or as such boundaries may be modified during the term of this Agreement.

c. "Collection" means the act of picking up, transporting and removing Commercial Solid Waste and Recyclable Materials from the place of generation.

d. "Commercial Non-Exclusive Collection Services" means Commercial Non-exclusive Solid Waste Collection Service and Commercial Non-Exclusive Recycling Collection Service.

e. "Commercial Non-Exclusive Recycling Collection Service" means the Collection of Commercial Recyclable Materials in the CITY by a FRANCHISEE and the transportation and processing of those Recyclable Materials.

f. "Commercial Non-Exclusive Solid Waste Collection Service" means the Collection of Commercial Solid Waste in the CITY by a FRANCHISEE and the transportation, processing and disposal of that Commercial Solid Waste.

g. "Commercial Solid Waste" means Solid Waste that is generated by a Business or Multi-Family Residential Property and Collected at such Business or Multi-Family Residential Property.

h. "Covered Generator" means a Business that generates four (4) or more cubic yards of Commercial Solid Waste per week or is a Multi-Family Residential Property of five (5) or more dwelling units.

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i. "Customer" means a Business or Multi-Family Residential Property owner who contracts for Commercial Collection Services and enters into a Service Agreement with a FRANCHISEE. Where several Business or Multi-Family Residential Properties share containers and Commercial Non-Exclusive Collection Services, "Customer" refers only to the party whom enters into a Service Agreement for Commercial Non-Exclusive Collection Services.

j. "Designated Recyclable Materials" means materials, as designated by the Public Works Director and/or his or her designee, that are required to be separated by Covered Generators from Commercial Solid Waste prior to disposal and returned for use or reuse in the form of raw materials for new, used or reconstituted products. Such materials include, but are not limited to those materials set forth in subsection "o" below.

k. "Franchise", "Franchise Agreement" or "Agreement" means this written document and all amendments thereto between CITY and FRANCHISEE governing the provision of Commercial Non-Exclusive Collection Services as provided herein, including all exhibits hereto, as it may be amended from time to time.

l. "FRANCHISEE" means a business which has entered into a Franchise Agreement with CITY to provide Commercial Non-Exclusive Collection Services.

m. "Multi-Family Residential Property" means five (5) or more residential dwelling units located on a single parcel of land and any mobile home park located within the City.

n. "National Contracts" means contracts between waste management companies and multi-sited waste generating companies that operate currently throughout the United States, in more than one state.

o. "Recyclable Materials" means those materials generated by a **Covered Generator** which are capable of being recycled and which would otherwise be processed or disposed of as Commercial Solid Waste. These materials will be as defined by CITY from time to time. Recyclable Materials currently include: newsprint (including inserts); mixed paper (including magazines, catalogs, envelopes, junk mail, corrugated cardboard, Kraft brown bags and paper, paperboard, paper egg cartons, and telephone books); glass containers; aluminum beverage containers; small scrap and cast aluminum (not exceeding ten (10) pounds in weight for any single item); steel including "tin" cans and small scrap (not exceeding ten (10) pounds in weight for any single item); bimetal containers; mixed plastics such as plastic bags, plastic film, plastic containers (1-7), and bottles including containers made of HDPE, LDPE, PET, or PVC; aseptic containers; polystyrene; wood pallets and non-treated and unpainted wood scraps; and those materials added by FRANCHISEE or CITY from time to time.

p. "Recyclable Material Container" means any box, tub, cart, bin, or other container provided by FRANCHISEE that is made of metal, hard plastic or other similar material, is suitable for Collection of Recyclable Materials and is approved by CITY.

q. "Recycling Plan" means the plan to be obtained from all Customers that are Covered Generators by FRANCHISEE to document understanding of all requirements of California Mandatory Commercial Recycling Law and Chapter 6.21 of the Rancho Cordova Municipal Code and record the selected compliance option of each designated material.

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r. "Service Agreement" means a written agreement between FRANCHISEE and a Covered Generator or Customer concerning the provision of Commercial Non-Exclusive Collection Services.

s. "Solid Waste" means all putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, construction and demolition debris, discarded home and industrial appliances, dewatered, treated or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semi-solid wastes, and other discarded solid and semi-solid wastes. Solid Waste does not include hazardous waste or low-level radioactive waste regulated under Chapter 7.6 (commencing with Section 25800) of Division 20 of the Health and Safety Code, or medical waste. Solid Waste does not include Recyclable Materials that are set out for separate Collection for the purposes of recycling, and that are not landfilled.

t. "Source Separate" or "Source Separated" means the process of removing Recyclable Materials from Solid Waste for the purpose of recycling.

Section 2. Grant of Non-Exclusive Franchise.

a. CITY hereby grants to FRANCHISEE a non-exclusive Commercial Solid Waste and Recyclables Collection Franchise authorizing FRANCHISEE to engage in the business of Collecting, transporting, processing, and disposing of Commercial Solid Waste and **Commercial** Recyclable Materials kept, accumulated or generated in CITY **by Covered Generators** and to use the public streets and rights of way for such purpose.

b. This grant is pursuant to FRANCHISEE's application for the Franchise, which application is incorporated herein by this reference.

Section 3. Acceptance of Franchise.

a. FRANCHISEE hereby accepts the Franchise on the terms and conditions set forth in this Agreement, Chapters 6.20 and 6.21 of the Rancho Cordova Municipal Code, and all related ordinances and resolutions. Execution of this Agreement shall not constitute the notification required by Public Resources Code Section 49520.

Section 4. Term of Franchise.

a. Subject to Section 29 of this Agreement, the term of the Franchise granted to FRANCHISEE shall be from the date first indicated above through December 31, 2017.

b. In the event CITY offers to extend the term of this Agreement, and FRANCHISEE intends to accept such offer, FRANCHISEE shall provide CITY with updated application information identifying all material changes since the submission of the initial application or the last application update no later than one hundred and twenty (120) days prior to the end of the term of this Agreement.

c. In the event CITY offers to extend the term of this Agreement, either CITY or FRANCHISEE may give notice of a desire to negotiate material changes to this Agreement no later than one hundred twenty (120) days prior to the end of the term of this Agreement, and the parties agree to negotiate in good faith regarding such proposed changes.

Section 5. Conditions for Effectiveness.

The effectiveness of this Agreement is subject to FRANCHISEE's satisfaction of each and all of the conditions set forth below, each of which may be waived, in writing, in whole or in part by CITY.

- a. Accuracy of Representations. The representation and warranties made by FRANCHISEE in its Application for Franchise are true and correct on and as of the effective date.
- b. Absence of Litigation. There is no litigation pending on the effective date in any court challenging the award or execution of this Agreement or seeking to restrain or enjoin its performance.
- c. Furnishing of Insurance. FRANCHISEE has furnished evidence of the Insurance required by Section 17 of this Agreement.

Section 6. Limitations on Scope of Franchise.

Under the terms of this Franchise, FRANCHISEE has the authority to Collect only Commercial Solid Waste and Recyclable Materials from Businesses and Multi-Family Residential Properties and to provide drop-box service to all generators.

Section 7. Franchise Fees.

- a. During the term of the Franchise, FRANCHISEE shall pay to CITY franchise fees for the privilege of using CITY streets and public rights-of-way to engage in the business of providing Commercial Non-Exclusive Solid Waste and Recyclables Collection Services in CITY.
- b. Franchise fees shall be a percentage of all gross **collection** revenues, less franchise fees, received from Customers, including those Customers **for the payment of Commercial Solid Waste collection services only**, that are state or federal agencies or entities located within CITY, for the provision of Commercial Non-Exclusive Solid Waste and **Recyclables** Collection Service. **Franchise fees shall not be assessed on collection revenues paid by Customers for Commercial Recycling Materials collection services.** The franchise fee shall be calculated based on gross **Commercial Solid Waste** collection revenues prior to FRANCHISEE imposing the franchise fee on its Customers.
- c. The franchise fee percentage shall be ten 10 percent (10%) or such other amount that may be adopted at any time during the term of this Agreement by a resolution of the City Council, or by the City Manager if the City Council has delegated such authority to the City Manager by resolution.
- d. All FRANCHISEES, including public entities engaged in the provision of Commercial Non-Exclusive Collection Services, shall pay the franchise fee as set forth herein, or such other franchise fees as may be set forth in any subsequent resolution adopted by the City Council.
- e. FRANCHISEE shall pay franchise fees on revenue generated from all Commercial Solid Waste **and Recycling** collected pursuant to this Agreement regardless of the method of disposal or handling. **FRANCHISEE shall not owe any franchise fees on revenues generated from the sale of Recyclable Materials.**

Section 8. Franchise Fee Payment.

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a. Franchise fees shall be payable on a monthly basis, and shall be due and payable on the first day of the second month immediately following the month in which collection revenue is received. Each payment shall be calculated in accordance with the provisions of this Agreement and the Rancho Cordova Municipal Code.

b. The franchise fee shall be paid to the Public Works Director at the address set forth in Section 8(f) of this Agreement. Each payment shall be accompanied by a "gross revenue form," verified by the person making the payment, or a duly authorized representative of the person, showing the calculation of the franchise fee payable in such form and detail as the Public Works Director may require and such other information as the Public Works Director may determine is material to a determination of the amount due.

c. If no revenue subject to the franchise fee is collected during a given month, the gross revenue form must still be submitted to the Public Works Director in the manner described in Section 8(b) of this Agreement.

d. No statement filed under this Section shall be conclusive as to the matters set forth in such statement, nor shall the filing of such statement preclude CITY from collecting by appropriate action the sum that is actually due and payable.

e. If franchise fees are not paid by FRANCHISEE in the time and manner described in this Section 8 of this Agreement, then in addition to the franchise fees, FRANCHISEE shall pay a late payment charge in an amount equal to fifty dollars (\$50.00), plus two percent (2%) of the franchise fee that is due, plus interest equal to one and one-half percent (1.5%) for each month in which the franchise fee was not timely paid.

f. FRANCHISEE shall pay all required franchise fees to:
City of Rancho Cordova
Attn: Public Works Director
2729 Prospect Drive
Rancho Cordova, CA 95670

g. If FRANCHISEE remits franchise fees by personal delivery to CITY, such franchise fees shall be deemed timely paid only if delivered on or before the due date. If FRANCHISEE remits franchise fees by mail or other delivery service, such franchise fees shall be deemed timely only if: (1) the envelope containing the franchise fee payment bears a postmark or receipt showing that the payment was mailed or sent on or before the due date; or (2) FRANCHISEE submits proof satisfactory to CITY'S Public Works Director that the franchise fee payment was in fact deposited in the mail or sent on or before said due date.

h. In the event FRANCHISEE believes that it has paid franchise fees in excess of the fees due to CITY, FRANCHISEE may submit a request for refund to the Public Works Director on a form provided by said Public Works Director. If proof of overpayment is satisfactory to the Public Works Director, the Public Works Director shall refund to FRANCHISEE any overpayment. FRANCHISEE shall not apply any overpayment as a credit against any franchise fees or other amounts payable to CITY unless specifically so authorized by the Public Works Director in writing.

Section 9. Ownership of Commercial Solid Waste and Recyclable Materials.

CITY does not gain any ownership or right to possess Commercial Solid Waste or Recyclable Materials Collected by FRANCHISEE pursuant to this Agreement. Subject to the provisions of this Agreement, FRANCHISEE shall have the right to retain any benefit resulting from its right to retain, recycle, process, dispose of, or use the Commercial Solid Waste or Recyclable Materials that it Collects pursuant to the terms of this Agreement.

Section 10. Disposal and Processing of Commercial Solid Waste and Recyclable Materials.

FRANCHISEE shall dispose of or process Commercial Solid Waste or Recyclable Materials Collected or transported by FRANCHISEE only by taking such Commercial Solid Waste or Recyclable Materials to a landfill, transfer station, recycling facility or materials recovery facility of FRANCHISEE'S choice, which is lawfully authorized to accept such Commercial Solid Waste and/or Recyclable Materials. FRANCHISEE shall not dispose of such Commercial Solid Waste or Recyclable Materials by depositing it on any land, whether public or private, or in any river, stream or other waterway, or in any sanitary sewer or storm drainage system.

Section 11. Mandatory Business and Multi-Family Residential Recycling

The intent and purpose of the Section is to comply with the State Mandatory Commercial Recycling Law and the CITY'S Business and Multi-Family Recycling Ordinance established in Chapter 6.21 of the Rancho Cordova Municipal Code.

a. Requirements for FRANCHISEE.

- (1) FRANCHISEE shall offer collection service and automatic lift containers, bins or roll-off bins for Recyclable Materials sufficient to accommodate the quantity and type of Designated Recyclable Material to all its Commercial Solid Waste Customers.
- (2) FRANCHISEE shall equip and provide automatic lift containers, bins and roll off bins for Recyclable Materials. Upon request from CITY or commercial Customer, FRANCHISEE shall provide locks and/or other suitable features to prevent theft of recyclable materials.
- (3) FRANCHISEE shall place CITY approved signage on all automatic lift containers, bins and roll bins for Recyclable Materials.
- (4) FRANCHISEE shall offer containers, bins, and/or reusable bags to be used at the point of disposal sufficient to contain Recyclable Materials generated on the Customer's site.
- (5) FRANCHISEE shall not take a Customer's Recyclable Materials to a landfill or other disposal site, but to a recycling facility.
- (6) FRANCHISEE, upon request, shall provide the Public Works Director, and/or his or her designee, with a copy of a Service Agreement, Recycling Plan or other document (e.g., receipt from a Recycling Facility) demonstrating that the Covered Generator's Recyclable Materials are being taken to a recycling facility. The Service Agreement, Recycling Plan or other documents shall be available for inspection by the Public Works Director, and/or his or her designee, at FRANCHISEE'S place of business during normal business hours.
- (7) CITY staff, or their agent, may audit all FRANCHISEE'S records as set forth in Section 16 of this Agreement.

Section 12. Service Agreements.

a. FRANCHISEE shall execute a written Service Agreement with all Customers before FRANCHISEE provides Commercial Non-Exclusive Collection Services. Service Agreements shall incorporate, but are not limited to, the following terms and conditions:

- (1) Be clearly labeled as a Service Agreement;
- (2) Describe the Commercial Collection Services to be provided by FRANCHISEE, the frequency and hours of such services, and the cost for providing such services to the Customer;
- (3) Clearly state the initial term and renewal terms;
- (4) Any term that is mutually agreed upon by the Customer and FRANCHISEE, but recognizing that this Franchise Agreement must remain in full force and effect throughout the term of the Service Agreement;
- (5) Automatic renewal for successive periods of no longer than one (1) year, unless either party gives written notice of termination by certified or registered mail at least sixty (60) days prior to the termination date of the current Service Agreement;
- (6) A term allowing for amendments as mutually agreed upon by the Customer and FRANCHISEE;
- (7) Require that Customers are to receive a written notice of price increases not less than thirty (30) days prior to the effective date of such price increase;
- (8) FRANCHISEE shall respond to Customer inquiries regarding the Service Agreement within thirty (30) days;
- (9) Require that Collection Containers be removed from the property of a Customer by FRANCHISEE within thirty (30) days of final termination of services to the Customer;
- (10) Include language stating that Customers will be notified in writing within thirty (30) days of termination of this Franchise Agreement;
- (11) Not require Customers to pay over three (3) months liquidated damages during the renewal term and over six (6) months liquidated damages during the initial term of the Service Agreement;
- (12) Not require Customers to give FRANCHISEE the exclusive right to provide Commercial Non-Exclusive Recycling Collection Service as a condition of a Service Agreement, unless the Customer affirmatively indicates that this is its desire;
- (13) Not require Customers to give notice of any offer by a competitor or require Customers to give FRANCHISEE the right to respond to such offer; and
- (14) Include language stating that the Service Agreement shall automatically terminate upon the termination of this Franchise Agreement.

b. The requirements for Service Agreements contained in this Section shall be incorporated into all new Service Agreements executed on or after January 1, 2013. Existing Service Agreements between FRANCHISEE and a Customer executed before January 1, 2013 shall remain in force for the remainder of the existing contract and shall be governed by the terms and conditions specified in the existing Service

Agreement, provided that such existing Service Agreements shall comply, to the extent allowable by law, with the new recycling programs established by this Franchise Agreement and California Law.

c. National contracts or agreements are exempt from the requirements of contract length and renewal terms.

Section 13. Recycling Plans.

a. The Public Works Director, and/or his or her designee, shall provide a Recycling Plan template to FRANCHISEE to be used to document compliance with this Section for each Covered Generator.

b. FRANCHISEE shall obtain a signed Recycling Plan from each Covered Generator prior to providing Commercial Non-Exclusive Solid Waste Collection Service to that Covered Generator.

c. FRANCHISEE shall review, complete, and sign the Recycling Plan obtained from each Customer that is a Covered Generator in accordance with Section b. above.

d. FRANCHISEE shall maintain a copy of each completed Recycling Plan, and submit it to the Public Works Director, and/or his or her designee, for audit purposes within five (5) days of receipt of a written request.

e. Audit of Recycling Plans. During the term of this Agreement, CITY may perform or cause to be performed up to two (2) Recycling Plan audits. If FRANCHISEE services more than four (4) Covered Generators, FRANCHISEE shall be responsible for the cost of the two (2) Recycling Plan audits if requested by CITY. Except as set forth in this Section, FRANCHISEE'S cost of the two (2) audits shall be limited to a total of Ten Thousand Dollars (\$10,000.00). If a Recycling Plan audit determines that more than ten percent (10%) of the Recycling Plans are incomplete or inaccurate, CITY may request a follow-up audit within twelve (12) months and FRANCHISEE will be responsible for all additional cost associated with the follow-up audit.

Section 14. Requirements for Public Outreach and Education Plan to Covered Generators.

a. In the event FRANCHISEE will provide Commercial Non-Exclusive Solid Waste and Recyclables Collection Services to more than four (4) Covered Generators annually, FRANCHISEE shall prepare an annual (calendar year) Public Education and Outreach Plan and submit the plan to CITY for approval. CITY shall review the plan and meet with FRANCHISEE to finalize the plan. FRANCHISEE shall, at its own expense, implement the approved annual (calendar year) Public Education and Outreach Plan. The proposed public outreach and education plan must be submitted for CITY approval no later than February 1, 2013 for the 2013 Contract Year and by October 1, 2013 for the 2014 Contract Year, and annually, by October thereafter. Franchisee must submit an annual report to CITY regarding the activities undertaken pursuant to the Public Education and Outreach Plan, per Section 15(e) of this Agreement.

Section 15. Reports

- a. FRANCHISEE shall file with the Public Works Director the following reports:
- (1) Quarterly Tonnage Report that contains the quantities of Commercial Solid Waste and Recyclable Materials Collected, transported, processed, diverted, and/or disposed.

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Such report shall be in such form and detail as required by the Public Works Director. Specifically, the report shall contain, but not be limited to, the following information:

- i. The Commercial Solid Waste and Recyclable Materials tonnage Collected and removed within the CITY by FRANCHISEE during the previous quarter;
- ii. The Commercial Solid Waste and Recyclable Materials tonnage Collected and removed during the previous quarter within the CITY by FRANCHISEE that was diverted and the location of the facility(ies) where such Commercial Solid Waste and Recyclable Materials were diverted; and
- iii. The Commercial Solid Waste and Recyclable Materials tonnage Collected and removed within the CITY by FRANCHISEE that was disposed of during the previous quarter and the location of the disposal facility where the disposal of such Commercial Solid Waste and Recyclable Materials occurred.

(2) Quarterly Business and Multi-Family Property Recycling Hauler Status Report that contains the status of Covered Generators. Such report shall be in form and detail as required by the Public Works Director. Specifically, the report shall contain, but not be limited to, the following information segregated by commercial and multi-family residential property accounts:

- i. The total number of Covered Generators in the CITY, which are Customers of FRANCHISEE, that are in compliance with California's Mandatory Commercial Recycling Law and the Rancho Cordova Municipal Code for which a completed Recycling Plan is on file;
- ii. The total number of Covered Generators that are Customers of FRANCHISEE in CITY;
- iii. The total number of Covered Generators, which are Customers of FRANCHISEE in the CITY, that have completed a Recycling Plan but remain in violation of California's Mandatory Commercial Recycling Law and the Rancho Cordova Municipal Code for any reason;
- iv. The total weekly cubic yardage of Non-Exclusive Solid Waste Collection Service and Non-Exclusive Recyclable Materials Collection Service provided to Covered Generators that are Customers of FRANCHISEE in CITY during the reporting period; and
- v. A List of all Covered Generators, which are Customers of FRANCHISEE in the CITY, which includes, but is not limited to each customer's:
 - a. Billing Contact;
 - b. Billing Address;
 - c. Billing Contact Phone Number;
 - d. Service Contact;
 - e. Service Address;
 - f. Service Contact Phone Number;
 - g. Container size and frequency of Collection of Non-Exclusive Solid Waste Collection Service;

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- h. Container size and frequency of Collection of Non-Exclusive Recyclable Materials Collection Service; and
- i. Status of Recycling Plan.

b. FRANCHISEE shall maintain quarterly records, on forms approved by the Public Works Director, containing such information as may be required by the Public Works Director pertaining to the number and types of accounts served by FRANCHISEE under the terms of this Agreement. This information shall be provided to Public Works Director upon request.

c. If the quarterly reports required under Section 15(a) of this Agreement are not filed by the due date, **and the CITY provide written notice to FRANCHISEE that the report has not been received**, the report shall be deemed delinquent, and FRANCHISEE shall pay to CITY a delinquent report charge in the amount of fifty dollars (\$50.00) per day. If the report remains delinquent for more than fifteen (15) days, FRANCHISEE shall pay to CITY a delinquent report charge in the amount of one hundred dollars (\$100.00) per day. Such delinquent report charge shall be in addition to any franchise fees or other charges payable by FRANCHISEE for the same period of time.

d. Each quarterly report shall be submitted on or before the first day of the second calendar month immediately following the reportable quarter and shall be submitted as provided in Section 31 of this Agreement. Quarterly reports shall be submitted in a form and format approved by CITY.

e. Annual Public Outreach and Education Report. On or before February 1, 2014 and annually thereafter, FRANCHISEE shall submit to CITY an annual report describing the public education and information activities undertaken during the year pursuant to its Public Outreach and Education Plan under Section 15 of this Agreement, including distribution of outreach material, community information and events, and other activities related to public outreach and education. Annual reports shall be submitted in a form and format approved by CITY.

f. If the annual report required under Section 15(e) of this Agreement is not filed by the due date, **and the CITY provide written notice to FRANCHISEE that the report has not been received**, the report shall be deemed delinquent, and FRANCHISEE shall pay to CITY a delinquent report charge in the amount of fifty dollars (\$50.00) per day. If the report remains delinquent for more than fifteen (15) days, FRANCHISEE shall pay to CITY a delinquent report charge in the amount of one hundred dollars (\$100.00) per day. Such delinquent report charge shall be in addition to any franchise fees or other charges payable by FRANCHISEE for the same period of time.

g. The Public Works Director shall establish guidelines, forms and other appropriate material to assist FRANCHISEE in preparing the reports required by this Section. FRANCHISEE's failure to file the reports required by this Section shall constitute cause for termination or suspension of its Franchise pursuant to the Rancho Cordova Municipal Code and Section 29 of this Agreement.

h. To the extent permitted by the California Public Records Act, any reports, plans, and information required by this Agreement shall be deemed confidential and shall not be subject to public disclosure except for each franchisee's aggregate totals.

Section 16. Inspection Authority.

a. FRANCHISEE shall at all times maintain accurate and complete accounts of all revenues and income arising out of its operations under this Franchise Agreement and the information needed to complete the forms and reports required by Sections 8 and 15 of this Agreement. FRANCHISEE'S books, accounts and records reasonably necessary for the enforcement of this Franchise Agreement shall be made available for inspection, examination and audit during normal business hours by authorized officers, employees and agents of CITY. CITY shall give FRANCHISEE written notice at least three (3) business days prior to any inspection, audit or examination of these records.

b. Where the Public Works Director determines that an audit is necessary to verify the accuracy, or completeness of reported franchise fees, tonnages or diversion data, FRANCHISEE shall be responsible for reimbursement of audit costs, including any CITY staff time or consultant services, to perform such audit.

c. FRANCHISEE shall be responsible for reimbursement of audit costs for CITY staff, and any other consultant services, to perform detailed follow-up audits where staff determines that documentation of, franchise fees, tonnage, diversion or other data, as reported by FRANCHISEE, is inadequate, incomplete or inaccurate. Where necessary, CITY staff will retain the services of an independent consultant to verify performance and conduct any necessary diversion audits.

Section 17. Insurance Requirements.

FRANCHISEE shall obtain and shall maintain throughout the term of this Agreement, at FRANCHISEE's sole cost and expense, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of work pursuant to this Agreement by FRANCHISEE, its agents, representatives, employees or contractors.

a. Minimum Scope and Limits of Insurance. FRANCHISEE shall maintain at least the following minimum insurance coverage:

- (1) *Comprehensive General Liability:* \$3,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit.
- (2) *Automobile Liability:* \$3,000,000 combined single limit per accident for bodily injury and property damage. Coverage shall include hired autos and non-owned autos.
- (3) *Workers' Compensation and Employers Liability:* Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$3,000,000 per accident.
- (4) Hazardous Waste and Environmental Impairment Liability Insurance \$3,000,000 per occurrence.

b. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be described in FRANCHISEE'S application for this Franchise, or in such other manner as is acceptable to CITY. If FRANCHISEE desires to change its deductible or self-insured retention after the effective date of this Agreement, it shall first obtain approval of CITY's Risk Manager for these increases. FRANCHISEE shall be responsible for payment of all deductibles or self-insured retentions.

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c. Other Insurance Provisions. The required insurance policies are to contain, or be endorsed to contain, the following provisions:

(1) General Liability and Automobile Liability Coverage.

- i. CITY, its officers, employees, agents and contractors are to be covered as an additional insured as respects: liability arising out of activities performed by, or on behalf of FRANCHISEE; products and completed operations of FRANCHISEE; premises owned, leased or used by FRANCHISEE; and automobiles owned, leased, hired or borrowed by FRANCHISEE. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.
- ii. FRANCHISEE'S insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of FRANCHISEE'S insurance and shall not contribute with it.
- iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officers, employees, agents or contractors.
- iv. Coverage shall state that FRANCHISEE'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(2) *All Coverage.* Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY.

d. Placement of Insurance. Insurance shall be placed with insurers acceptable to CITY'S Risk Manager. FRANCHISEE must place insurance with a current A.M. Best rating of no less than A: VII. CITY'S Risk Manager may waive or alter this requirement, in writing, or accept self-insurance in lieu of any required policy of insurance if, in the opinion of the Risk Manager, the interests of CITY and the general public are adequately protected.

e. Proof of Insurance. FRANCHISEE shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Proof of insurance shall be mailed or personally delivered to the address provided in Section 31 of this Agreement.

f. Acknowledgment. FRANCHISEE acknowledges that the Commercial Solid Waste and Recyclables Collection Franchise granted to FRANCHISEE will not become effective, and FRANCHISEE will have no authority to perform Commercial Non-Exclusive Collection Services in the CITY, unless FRANCHISEE provides satisfactory proof of insurance prior to beginning operations as a FRANCHISEE.

g. Modification of Insurance Requirements. CITY shall retain the right at any time to review the coverage, form and amount of the insurance required hereby. If, in the opinion of the CITY'S Risk Manager, the insurance provisions in this Agreement do not provide adequate protection for CITY and for members of the public, CITY may require FRANCHISEE to obtain insurance sufficient in coverage, form and amount to provide adequate protection. CITY's requirements shall be reasonable but shall be imposed to assure protection from and against the kind and extent of risks that exist at the time a change in

insurance is required. CITY'S Risk Manager may modify these insurance requirements only upon approval of the City Council.

Section 18. Indemnity.

a. FRANCHISEE agrees to defend, with counsel agreed upon by both parties, indemnify, and hold harmless CITY and its agents, officers, contractors, servants, public officials, volunteers, and employees from and against any and all claims asserted, costs, the cost of remediation and cost recoveries pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, losses and damages, liabilities, expenditures or causes of action of any kind (including negligent, reckless, willful or intentional acts or omissions of the FRANCHISEE, its employees, agents, subcontractors, supplier, or any person or organization directly or indirectly employed by any of them to perform or furnish any services or anyone for whose acts any of them may be liable), or injuries to any person or property, including injury to CITY employees, agents or officers which arise from, or are connected with, or are caused or claim to be caused by acts or omissions of FRANCHISEE, or their agents, officers or employees, in the performance of the non-exclusive Franchise or this Agreement, or in performing the work or services therein, and all costs and expenses of investigating and defending against same; provided, however, that FRANCHISEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its agents, officers, servants and employees.

b. Hazardous Substances Indemnification. FRANCHISEE agrees to defend, with counsel agreed upon by both parties, indemnify, and hold harmless CITY and its agents, officers, contractors, servants, officers, volunteers, and employees from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages), injuries, costs (including, without limit, any and all 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 without limit attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity providing the enforcement action is successful in establishing indemnification), (collectively, "Damages") of any kind whatsoever paid, incurred or suffered by, or asserted against, indemnities arising from or attributable to the acts or omissions of FRANCHISEE, its officers, directors, employees, companies, or agents, whether or not negligent or otherwise culpable, in connection with or related to the performance of this contract, including without limit damages arising from or attributable to any operations, repair, clean-up or detoxification, or preparation and implementation of any removal, remedial, response, closure, post-closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous substance, Hazardous Waste, and/or Household Hazardous Waste (collectively, "Waste") at any places where FRANCHISEE transfers, transports, processes, stores or disposes of Solid Waste or other waste collected under this contract, The indemnity afforded indemnitees shall only be limited to exclude coverage for intentional wrongful acts and active negligence of indemnitees. The foregoing indemnity is intended to operate as an agreement pursuant to §107(e) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §9607(e), and California Health and Safety Code §25364, to defend, protect, hold harmless, and indemnify CITY from liability. Nothing in this provision shall prevent FRANCHISEE from seeking indemnification or contribution from persons or entities other than indemnitees, for any liabilities incurred by the FRANCHISEE, or the indemnitees.

c. Indemnification for Failure to Meet AB 939 Goals. FRANCHISEE agrees to protect and defend CITY, with counsel selected by FRANCHISEE and CITY, to pay all attorneys' fees, and to indemnify

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and hold CITY harmless from and against all fines or penalties imposed by CalRecycle if the diversion goals specified in the California Public Resources Code Section 41780 as of the date hereof and hereafter throughout are not met by CITY with respect to the Materials Collected by FRANCHISEE and if the lack in meeting such goals are attributable to the failure of the FRANCHISEE to implement and operate the recycling or diversion plans and/or programs or related activities required by this contract. Such indemnification of CITY by FRANCHISEE shall be proportionate to FRANCHISEE'S degree of fault for the penalty or fine imposed, as required under Public Resources Code § 40059.1.

Section 19. Equipment.

a. Any and all containers provided to covered generators by FRANCHISEE for storage, collection or transportation of Commercial Solid Waste or Recyclable Materials shall meet the requirements of the Rancho Cordova Municipal Code and applicable California laws.

b. Any and all vehicles used by FRANCHISEE to perform Commercial Non-Exclusive Collection Services shall meet the requirements of the Rancho Cordova Municipal Code and applicable California laws.

c. All collection equipment and vehicles used by FRANCHISEE shall have appropriate safety markings including, but not limited to, highway lighting, flashing and warning lights, clearance lights, and warning flags. All such safety markings shall be subject to the approval of the CITY and shall be in accordance with the requirements of the California Vehicle Code, as may be amended from time to time.

d. Each FRANCHISEE shall maintain collection equipment and vehicles in a clean condition and in good repair at all times, to the satisfaction of CITY.

e. FRANCHISEE shall insure that all Collection vehicle loads are covered while in transit and shall not litter premises in the process of providing Commercial Non-Exclusive Collection Services or while its vehicles are on the road. FRANCHISEE shall transport all materials Collected under the terms of this Agreement in such a manner as to prevent the spilling or blowing of such materials from the FRANCHISEE'S vehicles. FRANCHISEE shall exercise all reasonable care and diligence in providing Commercial Non-Exclusive Collection Services so as to prevent spilling or dropping of Commercial Solid Waste or Recyclable Materials and shall immediately, at the time of occurrence, clean up such spilled or dropped materials.

Section 20. Abandoned Containers.

a. If FRANCHISEE abandons any container used to provide Commercial Non-Exclusive Collection Services, CITY, or its designated agent may remove the container and/or dispose of the contents of the container.

b. If CITY or its designated agent removes a container abandoned by FRANCHISEE and/or disposes of the contents of any container abandoned by FRANCHISEE, CITY may charge FRANCHISEE for CITY'S costs incurred in such removal/disposal and for CITY'S costs of storage of the container. FRANCHISEE shall reimburse CITY for such costs within ten (10) days of the date of CITY'S invoice for such costs.

c. For the purposes of this Section, "abandoned" includes:

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- (1) FRANCHISEE'S failure to remove the container within the time period specified by the City Council upon termination of the Commercial Solid Waste and Recyclables Collection Franchise;
- (2) FRANCHISEE's failure to remove the container within a reasonable period after the expiration of this Agreement except in the case where FRANCHISEE has been granted an extension of the term of this Agreement or FRANCHISEE has been granted a subsequent Commercial Solid Waste and Recyclables Collection Franchise authorizing FRANCHISEE to Collect and transport the type or types of Commercial Solid Waste and Recyclable Materials for which the container was used pursuant to this Agreement.
- (3) FRANCHISEE'S failure to dispose of the contents of the container within five (5) days after the Public Works Director issues written notice to FRANCHISEE to dispose of the contents.

Section 21. Franchisee Provided Commercial Solid Waste and Recyclables Containers.

a. General. Containers used for storage of Commercial Solid Waste and Recyclable Materials shall be designed and constructed to be watertight and prevent the leakage of liquids. All containers shall be painted and shall prominently display the name of FRANCHISEE.

b. Cleaning, Painting, Maintenance. FRANCHISEE shall make reasonable efforts to replace, clean or repaint all containers as needed so as to present a clean appearance.

Section 22. Signs.

FRANCHISEE shall have permanently displayed in a prominent place on the exterior of each truck utilized in the Collection, removal or transportation of Commercial Solid Waste or Recyclable Materials under this Agreement a sign which contains such information as is required by regulation of the city engineer adopted pursuant to the provisions of the California Code of Regulations, Title 14, Section 17344.

Section 23. Personnel.

a. Driver Qualifications. FRANCHISEE agrees that all drivers shall be trained and qualified in the operation of collection vehicles and must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.

b. Safety Training. FRANCHISEE shall provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment for collection of commercial solid waste and recyclables, or who are otherwise directly involved in such collection.

Section 24. Local Office.

FRANCHISEE shall at all times maintain a central office within CITY, or within the metropolitan area immediately adjacent to CITY, where representative of FRANCHISEE can be reached by telephone 9:00 a.m. through 5:00 p.m., Mondays through Fridays, legal holidays excepted. Such office shall have a local telephone number so that Customers served by the FRANCHISEE may contact the FRANCHISEE without the necessity of making a long distance telephone call.

Section 25. Compliance with Law.

FRANCHISEE shall perform all Collection, transportation and disposal operations in accordance with applicable federal, state, and local law, including CITY Ordinances, in accordance with all regulations promulgated under such laws, and in accordance with the terms and conditions of this Agreement.

Section 26. Permits and Licenses.

FRANCHISEE shall obtain and maintain, at FRANCHISEE'S sole cost and expense, all permits and licenses applicable to FRANCHISEE'S operations under this Agreement required of FRANCHISEE by any governmental agency.

Section 27. Administrative Charges

It shall be the duty of FRANCHISEE to perform services under this Agreement in such a manner as to ensure that services are of the highest caliber. In the event FRANCHISEE fails to perform the services set forth in this Agreement, CITY may assess administrative charges against FRANCHISEE in the following amounts:

a	Failure to clean up spillage or litter caused by CONTRACTOR.	1 st violation \$200.00; 2 nd violation \$500.00; 3 rd violation \$1,000.00*
b	Failure to maintain equipment in a clean, safe, and sanitary manner.	1 st violation \$200.00; 2 nd violation \$500.00; 3 rd violation \$1,000.00*
c.	Failure to have a vehicle operator properly licensed.	1 st violation \$200.00; 2 nd violation \$500.00, 3 rd violation \$1,000.00
d	Failure to properly cover materials in Collection vehicles.	1 st violation \$200.00; 2 nd violation \$500.00; 3 rd violation \$1,000.00
e	Failure to return CITY or CITY's representative calls, e-mails or correspondence two or more times within thirty (30) consecutive days	\$200.00 per occurrence
f.	Disposal of Recyclable Materials in a disposal facility or landfill without first obtaining the written permission of CITY.	\$500.00 per occurrence
g	Failure to deliver any Collected materials to a disposal facility, materials recovery facility, or green waste processing facility, as appropriate, except as otherwise expressly provided in this Agreement.	\$5,000.00 first failure \$25,000.00 each subsequent failure
h	Failure to submit complete and correct information or reports on time, following written notice from CITY to FRANCHISEE of deficiency.	\$50.00 per day for 1 – 15 days delinquent \$100.00 per day greater than 15 days delinquent
i.	Maintaining an incomplete or inaccurate Recycling Plan, the following written notice from CITY to FRANCHISEE of deficiency.	\$50.00 per plan

j.	Failure to prepare a Recycling Plan for a Customer that is a Covered Generator.	\$1,000.00 per incident
k.	Failure to comply with the requirements of this Agreement or Rancho Cordova Municipal Code not specified in items a. through j.- following written notice from CITY to FRANCHISEE of deficiency.	\$250.00 per incident

Section 28. Changes in Law.

CITY and FRANCHISEE understand and agree that the California Legislature has the authority to make comprehensive changes in Solid Waste Management legislation and that these and other changes in law in the future which mandate certain actions or programs for counties or municipalities may require CITY to make changes or modifications in some of the terms, conditions or obligations under this Agreement. FRANCHISEE agrees that the terms and provisions of the Rancho Cordova Municipal Code, as it now exists or as it may be amended in the future, shall apply to all of the provisions of this Agreement and the Customers of FRANCHISEE located within the CITY.

Section 29. Default, Termination.

a. Default. Except for the occurrence of Force Majeure, in the event of any material failure or refusal of FRANCHISEE to comply with any obligation or duty imposed on FRANCHISEE under this Agreement or the Rancho Cordova Municipal Code, the Public Works Director and FRANCHISEE shall meet and confer in good faith in an effort to agree on a resolution and cure of the breach. If the parties are unable to agree on the informal resolution or cure of the breach within ten (10) business days, the City Council shall have the right to terminate this Agreement if:

- (1) Following the ten (10) day meeting period described above, the Public Works Director shall have given written notice to FRANCHISEE specifying that a particular default or defaults exists which will, unless corrected, constitute a material breach of this Agreement on the part of FRANCHISEE, and
- (2) FRANCHISEE fails to correct such default or fails to take reasonable steps to commence to correct such default within thirty (30) days from the date of the notice given by the Public Works Director under Section a. (1) above and FRANCHISEE thereafter fails to diligently continue to take reasonable steps to correct such default.

b. The following events shall also constitute a material breach and default under this Agreement:

- (1) *Misrepresentation.* Any misrepresentation or disclosure made to CITY by FRANCHISEE in connection with or as an inducement to entering this Agreement or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time the representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.
- (2) *Fraud or Deceit.* If FRANCHISEE practices, or attempts to practice, any fraud or deceit upon CITY.
- (3) *Failure to Maintain Coverage.* If FRANCHISEE fails to provide or maintain in full force and effect the Worker's Compensation, liability, or indemnification coverage as required by this Agreement.

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- (4) *Violations of Regulation.* If FRANCHISEE violates any permits, orders or filing of any regulatory body having jurisdiction over FRANCHISEE which violation or non-compliance materially affects FRANCHISEE'S ability to perform under this Agreement, provided that FRANCHISEE may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the Franchise shall be deemed to have occurred during the pendency of the contestation or appeal, to the extent FRANCHISEE is able to adequately perform during that period.
- (5) *Acts or Omissions.* Any other act or omission by FRANCHISEE which materially violates the terms, conditions, or requirements of this Agreement, Rancho Cordova Municipal Code, AB 939, 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 FRANCHISEE cannot reasonably correct or remedy the breach within the time set forth in such notices, if FRANCHISEE should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.
- (6) *Termination of Service.* In the case of a breach related to the above Sections b. (1) through (5), and the breach continues for more than thirty (30) calendar days after written notice from the Public Works Director for the correction thereof, provided that where such breach cannot be cured within such thirty (30) day period, FRANCHISEE shall not be in default of this Agreement if FRANCHISEE shall have commenced such action required to cure the particular breach within ten (10) calendar days after such notice, and it continues such performance diligently until completed.

c. Termination. Upon the occurrence of a material breach, the City Council shall have the right to terminate this Agreement. In the event FRANCHISEE fails to cure the material breach specified in a written notice from the Public Works Director, then failure to cure may result in a declaration of termination of this Agreement by CITY.

d. Force Majeure. The performance of this Agreement may be discontinued or temporarily suspended in the event of Force Majeure. FRANCHISEE shall not be deemed to be in default and shall not be liable for failure to perform under this Agreement if FRANCHISEE'S performance is prevented or delayed by Force Majeure. For purposes of this Section, Force Majeure means acts of God including landslides, lightening, forest fires, storms, floods, freezing and earthquakes, civil disturbances, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, public riots, breakage, explosions, or government restraint. Notwithstanding anything to the contrary herein, CITY and FRANCHISEE agree that the settlement of strikes, lockouts or other industrial disturbances, and litigation, including appeals, shall be entirely within the discretion of FRANCHISEE and FRANCHISEE may make settlement thereof at such time and on any such terms and conditions as it may deem to be advisable, and no delay in making such settlement shall deprive FRANCHISEE of the benefit of this Section.

e. The Public Works Director shall serve written notice, either personally or by registered or certified mail, postage prepaid of the termination of a Franchise under this Agreement to the last place of business of FRANCHISEE and FRANCHISEE shall cease operation under its Franchise within ten (10) calendar days.

Section 30. Conditions Upon Termination.

- a. In the event this Agreement is terminated:
- (1) FRANCHISEE shall have no right or authority to provide Commercial Non-Exclusive Collection Services in CITY.
 - (2) FRANCHISEE shall, however, remain liable to CITY for any and all franchise fees that would otherwise be payable by FRANCHISEE, for any and all late payment charges and interest assessed pursuant to Section 8 of this Agreement and for any and all delinquent report charges assessed pursuant to Section 15 of this Agreement.
 - (3) FRANCHISEE shall have a continuing obligation to submit to CITY all reports and forms required by Sections 8 and 15 of this Agreement that relate to Commercial Non-Exclusive Collection Services performed by FRANCHISEE up to and including the date of termination.

b. In the event this Agreement is terminated, then within the time period specified by the City Council and if directed by the Public Works Director, FRANCHISEE shall remove all of FRANCHISEE'S Commercial Solid Waste and Directed Recyclable Materials containers from all of FRANCHISEE'S Non-Exclusive Collection Service locations and shall properly dispose or process all Commercial Solid Waste and Directed Recyclable Materials in such containers.

Section 31. Notices.

Except as otherwise provided in this Agreement, all notices required by this Agreement shall be given by personal service or by deposit in the United States mail, postage pre-paid and return receipt requested, addressed to the parties as follows:

To CITY: Cyrus Abhar, Director of Public Works
 City of Rancho Cordova
 2729 Prospect Park Drive
 Rancho Cordova, CA 95670

To FRANCHISEE: XXXXX
 XXXXX
 XXXXX

Notice shall be deemed effective on the date personally served or, if mailed, three days after the date deposited in the mail, unless otherwise specified in this Agreement.

Section 32. Relationship of Parties

The parties intend that FRANCHISEE shall perform the services required by this Agreement as an independent contractor and not as an officer or employee of CITY nor as a partner or joint venturer with CITY. No employee or agent of FRANCHISEE shall be deemed to be an employee or agent of CITY and shall not obtain any rights to retirement benefits, worker's compensation benefits, or any other benefits which accrue to the employees of CITY by virtue of their employment with said agency. Except as expressly provided herein, FRANCHISEE shall have the exclusive control over the manner and means of conducting the Commercial Non-Exclusive Collection Services performed under this Agreement and all persons performing such services. FRANCHISEE shall be solely responsible for the acts and omissions of its officers, employees, subcontractors and agents.

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FRANCHISEE agrees that this Agreement is not made in the interest of, or on behalf of, any undisclosed person, partnership, Franchisee, association, organization, or corporation. FRANCHISEE has not directly or indirectly colluded, conspired, connived or agreed with any person, partnership, FRANCHISEE, association, organization, or corporation to secure any advantage against CITY.

Section 33. Compliance with Law

In providing the services required under this Agreement, FRANCHISEE shall at all times, at its sole cost, comply with all applicable laws of the United States, the State of California, CITY and other states, or counties which may have jurisdiction over any service provided in this Agreement and with all applicable regulations promulgated by any federal, state, regional or local administrative and regulatory agency, now in force and as they may be enacted, issued or amended during the term of this Agreement.

Section 34. Governing Law

This Agreement, and all rights, obligations, duties, and liabilities pursuant to it, shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

Section 35. Jurisdiction

The parties agree that any litigation concerning or arising out of this Agreement shall be filed and maintained exclusively in the Municipal or Superior Courts of Sacramento County, State of California, or in the United States District Court for the Eastern District of California to the fullest extent permissible by law. With respect to venue, the parties agree that this Agreement is made in and will be performed in the CITY. Each party consents to service of process in any manner authorized by California law.

Section 36. Assignment

a. FRANCHISEE acknowledges that this Franchise Agreement involves rendering a vital service to the businesses within CITY, and that CITY has franchised FRANCHISEE to perform the services specified herein based on: (1) FRANCHISEE'S experience, skill and reputation for conducting its Commercial Non-Exclusive Collection Services in a safe, effective and responsible fashion, at all times in keeping with applicable waste management laws, regulations and good Commercial Solid Waste and Directed Recyclable Materials management practices; and (2) FRANCHISEE's financial resources to maintain the required equipment and to support its indemnity obligations to CITY under this Agreement. CITY has relied on each of these factors, among others, in choosing FRANCHISEE to perform the services to be rendered by FRANCHISEE under this Agreement.

b. Any Franchise granted is a privilege to be held in trust by the original FRANCHISEE. This Franchise Agreement shall not be transferred, sold, leased, assigned, or relinquished, or delegated to another person, either in whole or in part, whether by forced sale, merger, consolidation, bankruptcy laws or otherwise, without the prior approval of the City Council. This restriction includes the transfer of ownership of FRANCHISEE, or a majority of the ownership or control of FRANCHISEE, or the conveyance of a majority of FRANCHISEE's stock to a new controlling interest. This Agreement shall become void upon the abandonment of same by FRANCHISEE. The City Council shall not unreasonably withhold approval of a Franchise assignment, provided that such assignment does not unreasonably impact competition and the assignee is qualified to perform its obligations as required by this Franchise Agreement and any implementing CITY ordinance.

c. FRANCHISEE shall promptly notify the Public Works Director in writing in advance of any proposed assignment, sale, or transfer. In the event the City Council approves of any assignment, sale, or

transfer, said approval shall not relieve FRANCHISEE of any of its obligations or duties under this Agreement unless this Agreement is modified in writing to that effect.

Section 37. Binding on Successors

The provisions of this Agreement shall inure to the benefit to and be binding on the successors and permitted assigns of the parties.

Section 38. Waiver

The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision.

The subsequent acceptance by either party of any monies, which become due hereunder, shall not be deemed to be a waiver of any preexisting or concurrent breach or violation by the other party of any provision of this Agreement.

Section 39. FRANCHISEE'S Investigation

FRANCHISEE has made an independent investigation, satisfactory to it, of the conditions and circumstances surrounding the Agreement and the work to be performed by it.

Section 40. Entire Agreement

This Agreement, including any Exhibits, represents the full and entire Agreement between the parties with respect to the matters covered herein.

Section 41. Interpretation

This Agreement shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting.

Section 42. Amendment

This Agreement may not be modified or amended in any respect except by a written agreement duly approved and signed by the parties.

Section 43. Severability

If any nonmaterial provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement, which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above

CITY OF RANCHO CORDOVA

FRANCHISEE

Cyrus Abhar, Public Works Director

[NAME, TITLE]

Date: _____

Date: _____

Attest:

Mindy Cuppy, CMC, City Clerk

Date: _____

Approved as to Form:

Adam Lindgren, City Attorney

Date: _____

MEMORANDUM



DATE: December 17, 2012

TO: Honorable Mayor and Council Members

FROM: Jessica Jordan, Planning Department

SUBJECT: CITY-SPONSORED ZONING CODE AMENDMENT – DIGITAL
FREEWAY SIGNS – APPLIES CITYWIDE

RECOMMENDATION

Introduce and waive first reading of Ordinance No. 23-2012.

RESULT OF RECOMMENDED ACTION

Approving this Zoning Code Amendment removes the requirement for an Operating Agreement for Applicant's pursuing entitlements for a Digital Freeway Sign. The amendment also establishes community messaging, an operation and maintenance plan, and an increased standard for removal of traditional billboards within the City as standard requirements for when a Conditional Use Permit is considered for installation of a Digital Freeway Sign. The Amendment would allow the City Council to consider a deviation from these standards through the execution of an optional Operating Agreement when an Applicant desires to provide an equivalent community benefit in an alternative manner.

ADVANCES GOALS: 1, 2, and 6.

BACKGROUND

The Zoning Code currently requires a Conditional Use Permit and Operating Agreement for any proposed Digital Freeway Sign installation. The Operating Agreement is intended to establish the standards of community benefits (i.e. Amber Alert Messaging availability) and operation and maintenance associated with a specific Digital Freeway Sign. The Operating Agreement section of the Code also requires removal of at least one existing billboard with any proposed installation.

In order to strengthen the efficacy of the Zoning Code section pertaining to Digital Freeway Signs, the proposed amendments would make these items standard requirements of any Conditional Use Permit issued for a Digital Freeway Sign. All of the items have been incorporated into Section 23.743.150(C)(1) and (2). Additionally, the requirement for an Operating Agreement itself would become optional. An applicant would pursue an Operating Agreement at their discretion in the instance where a deviation from the standard requirements would be necessary.

In addition to these structural amendments, staff is proposing to increase the required ratio for removing traditional Billboards in exchange for installation of a Digital Freeway Sign to ensure the appropriate community benefit would result. As proposed, the amended removal provision would read as follows:

“For every one (1) Digital Freeway Sign installed, the Applicant must permanently remove at least four legally existing Billboards within the City prior to operation of the Digital Freeway Sign. An existing Billboard being refurbished as a Digital Freeway Sign may count as one of the four required permanent removals. The City may consider a reduction of required removals when an equivalent community benefit is achieved through alternative means. Such reduction shall be memorialized through an Operating Agreement identified under Section 23.743.150(C)(3).”

The previously adopted Code section required removal of one traditional Billboard for the installation of one Digital Freeway Sign. In considering this proposed increase, staff determined the increase from a 1:1 to a 4:1 ratio would be appropriate. Any applicant proposing to install a Digital Freeway Sign will enjoy a substantial increase in ability to lease advertisement space upon operation of this sign type as compared to the leasing ability for a traditional Billboard. Because of this increased ability, staff has determined that requiring a higher ratio of removal of traditional Billboards is a reasonable performance standard to request from an applicant. This ratio achieves a high rate of removal of traditional Billboards within the community while retaining a modest amount of traditional Billboards within the City limits should a sign provider continue to choose the traditional Billboard format.

Full text of the proposed amendments is included in **Attachment 1**. Added text is indicated by underline; deleted text is indicated by strikethrough.

ENVIRONMENTAL ANALYSIS

The Rancho Cordova General Plan Final Environmental Impact Report (EIR) was certified in June 2006 by the Rancho Cordova City Council. The General Plan EIR is a Program EIR (CEQA Guidelines section 15168). The City-Sponsored Digital Freeway Signs Zoning Code Amendment is an activity within the scope of the General Plan Program EIR and no further environmental review is required. Further environmental review is not required because the proposed amendments do not meet the criteria for preparing a subsequent EIR or Negative Declaration under State CEQA Guidelines Section 15162.

First, the Zoning Code amendments are consistent with the General Plan, are limited in nature, and do not constitute substantial changes to the existing policies and actions in the General Plan. Overall, the proposed amendments would not cause a new significant impact or substantially increase the severity of a previously identified significant impact from the General Plan Final EIR that would require major revisions to the General Plan Final EIR (State CEQA Guidelines Section 15162[a][1]). All impacts would be nearly equivalent to the impacts previously analyzed in the General Plan Final EIR.

Second, the City is not aware of any substantial changes in circumstances that would cause a new significant impact or substantially increase the severity of a previously

identified significant impact requiring major revisions to the General Plan EIR (State CEQA Guidelines Section 15162[a][2]). There have been no changes in the environmental conditions in the City not previously contemplated and analyzed in the General Plan EIR that would result in new or substantially more severe environmental impacts.

Third, there is no new information of substantial importance (which was not known or could not have been known at the time of the General Plan adoption in June 2006) that identifies: a new significant impact (condition “A” under State CEQA Guidelines Section 15162[a][3]); a substantial increase in the severity of a previously identified significant impact (condition “B” State CEQA Guidelines Section 15162[a][3]); mitigation measures or alternatives previously found infeasible that would now be feasible and would substantially reduce one or more significant effects of the General Plan; or mitigation measures or alternatives which are considerably different from those analyzed in the General Plan EIR which would substantially reduce one or more significant effects on the environment (conditions “C” and “D” State CEQA Guidelines Section 15162[a][3]). None of the “new information” conditions listed in the State CEQA Guidelines Section 15162[a][3] are present in this case to trigger the need for a subsequent EIR.

Lastly, all subsequent projects pursuing entitlements for installation of digital freeway signs will be subject to additional environmental review. No projects resulting in environmental impacts will be allowed by right under the proposed amendments. Therefore, there is no direct, or reasonably foreseeable indirect, impact on the environment. (Guidelines section 15060(c)(2).) Therefore, no conditions have occurred that would require the preparation of a subsequent or supplemental EIR or MND and no further environmental review is necessary at this time.

FINANCIAL IMPLICATIONS TO CITY

There are no financial implications to the City in amending the Zoning Code.

ATTACHMENT

1. Ordinance No. 23-2012, including Amended Zoning Code Text (**Exhibit A**) (additions in bold, deletions in strikethrough)

ATTACHMENT 1

CITY OF RANCHO CORDOVA

ORDINANCE NO. 23-2012

**AN ORDINANCE OF THE CITY COUNCIL OF RANCHO CORDOVA
AMENDING SECTION 23.743.150(2)(C) OF THE RANCHO CORDOVA ZONING CODE**

WHEREAS, the City's Zoning Code currently allows Digital Freeway Signs and discourages new Billboards in certain specified circumstances; and

WHEREAS, the Zoning Code should be amended to strengthen the minimum standards that any proposed Digital Freeway Sign would be required to comply with; and

WHEREAS, the City desires to increase the number of traditional Billboards that must be removed prior to the operation of any future proposed Digital Freeway Sign to ensure the community is provided with the highest benefit; and

WHEREAS, the removal of traditional Billboards within the City limits would provide a community benefit; and

WHEREAS, any future proposals for Digital Freeway Signs will be subject to a Conditional Use Permit issued by the City Council as well as future environmental review; and

WHEREAS, the certified Environmental Impact Report prepared for the previously adopted General Plan was found to adequately address all environmental impacts associated with the adoption of the proposed Zoning Code amendment; and

WHEREAS, this amendment was analyzed and determined to be within the scope of the General Plan EIR and requires no further environmental review under State CEQA Guidelines Section 15162; and

WHEREAS, on December 17, 2012, the City Council held a properly noticed public hearing at which it received a report from City staff, oral and written testimony from the public, and deliberated on the item.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA DOES ORDAIN AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are true and correct and made a part of this Ordinance.

Section 2. Findings. The City Council hereby finds that:

A. **CEQA Compliance.** The Rancho Cordova General Plan FEIR (SCH #2005022137) was certified in June 2006 by the Rancho Cordova City Council. The General Plan EIR is a Program EIR. (CEQA Guidelines section 15168.) The Digital Freeway Signs Zoning Code Amendment is an activity within the scope of the General Plan EIR and requires no further environmental review. Further environmental review is not required because the proposed amendments do not meet the criteria for preparing a subsequent EIR or Negative Declaration under State CEQA Guidelines section 15162. Furthermore, this is a procedural

ATTACHMENT 1

change in the Zoning Code that will not result in a direct, or reasonably foreseeable indirect, physical change in the environment. Therefore, adoption of the Ordinance is not subject to CEQA pursuant to Guidelines Section 15060(c)(2). All applications for Conditional Use Permits under this provision will be required to comply with the requirements of CEQA prior to the approval of the permit.

B. Consistency with the General Plan. The attached Zoning Code Amendment ("Amendment" or "proposed Amendment") is consistent with the General Plan as required by Government Code Section 65454. The Amendment is consistent with and implements the following provisions of the City's adopted General Plan:

General Plan Goals, Policies, and Actions:

- Urban Design Action.3.1.2 – Require projects to include features and attributes that positively contribute to the image of the City.

Finding: The proposed Zoning Code Amendment would further the positive image of the City by requiring any future digital freeway signs to remove at minimum, four existing traditional format billboards within the City limits. Removal of said signage would provide a community benefit by removing visual clutter from neighborhoods, contributing to a positive image of the City.

Section 3. Amendments. The City Council hereby adopts the amended Section 23.743.150(2)(C) of the Zoning Code attached in **Exhibit A**.

Section 4. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance, is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid or unenforceable.

Section 5. Effective Date. Within fifteen (15) days after adoption, a Summary of this Ordinance shall be published once in the Grapevine Independent or the Sacramento Bee, a newspaper of general circulation printed and published in Sacramento County and circulated in the City of Rancho Cordova, in accordance with Government Code Section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its inception.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova this ____ day of _____ 2012, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTACHMENT 1

Linda Budge, Mayor

ATTEST:

Mindy Cuppy, CMC, City Clerk

ATTACHMENT

Exhibit A: Amended Section 23.743.150(2)(C) of the Zoning Code with changes tracked

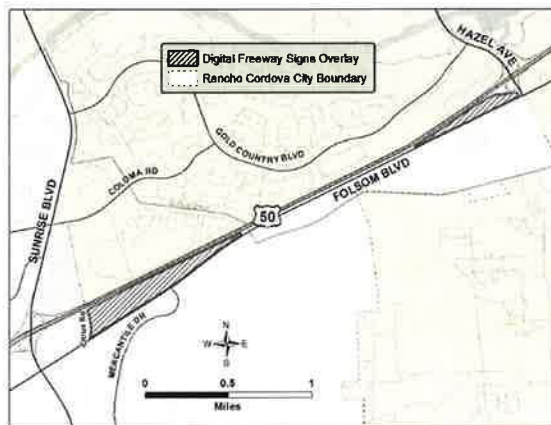
RANCHO CORDOVA MUNICIPAL CODE, TITLE 23 - ZONING CODE

Article 7 – Site Planning and Development Standards

23.743.150 Digital Freeway Signs Overlay

- A. **Purpose and Designation.** The Digital Freeway Signs Overlay is hereby established to enable the consideration of ~~d~~Digital ~~f~~Freeway ~~s~~Signs in certain, specific locations within the City. Digital Freeway Signs located within the Overlay area, that meet the development standards established below may be permitted through a Conditional Use Permit ~~and entrance into an Operating Agreement with the City Council.~~ Digital Freeway Signs are only allowed as Billboard Relocations or as conversions of an existing ~~b~~Billboard in place.
- B. **Location.** The Digital Freeway Signs Overlay encompasses two specific geographies in the northeastern area of the City. As seen in Figure 23.743-8 below, the Sunrise Boulevard area is bound by Highway 50 on the north, Folsom Boulevard on the south, Citrus Road on the west, and the terminus of the Industrially zoned parcels on the east. Also, as seen in Figure 23.743-8 below, the Hazel Avenue area is bound by Highway 50 on the north, Folsom Boulevard on the south, and Hazel Avenue on the east. Digital Freeway Signs proposed outside of these two specific areas are prohibited.

Figure 23.743-8: Digital Freeway Signs Overlay Location



C. Development Standards.

1. Legally existing ~~traditional-b~~Billboards may be refurbished to become a Digital Freeway Sign, subject to the development standards below, issuance of a Conditional Use Permit ~~and entrance into an Operating Agreement with the City Council.~~
 - i. **Number of Faces.** A Digital Freeway Sign may consist of at most, 2 Digital Display Areas, each positioned to be visible only by opposing directions of traffic. Double-faced signs shall not have an interior angle between the face of the panels greater than 45 degrees.

RANCHO CORDOVA MUNICIPAL CODE, TITLE 23 - ZONING CODE

Article 7 – Site Planning and Development Standards

- ii. Height. The maximum height shall be 60 feet.
- iii. Area. The maximum area of the each digital display area is 672 square feet.
- iv. Distance between Signs. No Digital Freeway Sign shall be located within 2,500 feet of any other Digital Freeway Sign within the City limits.
- v. Sign Structure. The sign structure supporting and surrounding the Digital Display Area shall be as small as feasibly possible so as to avoid any unnecessary height or width to the sign. The sign structure shall not add stylistic or architectural detailing to further call attention to the sign.
- vi. Pole Cladding. Decorative pole covering is required for newly constructed Digital Freeway Signs as well as any existing traditional billboard that is converted to a Digital Freeway Sign. Such covering shall be simple and streamlined in material and design so as to not call further attention to the sign.
- vii. Message Display. Digital Freeway signs shall display static messages only, and shall not have animation, movement, or the appearance or optical illusion of movement in or on any part of the sign structure, design, or pictorial segment of the sign. Each static message shall not include flashing or scintillating lighting, or varying light intensity.
- viii. Minimum Display Time. Each message on the sign must be displayed for a minimum of eight (8) seconds.
- ix. Illumination. Digital Freeway Signs shall not operate at brightness levels of more than 0.3 foot candles above ambient light, as measured using a foot candle meter at a distance of 250 feet from the sign face. Each Digital Display Area shall have a light sensing device that will adjust the brightness of the sign as ambient light conditions change throughout the day.
- x. Aesthetics. The sign will not require substantial trimming or reduction of existing vegetation and landscaping. The sign will not obstruct or obscure on-site signs on the same or adjacent properties.
- xi. Traffic Safety. The sign shall not create a visibility hazard to traffic on adjacent streets, freeways, or parking areas. The sign will not reduce parking availability as required by this Title. The sign will not interfere with on-site vehicular circulation.
- xii. Future Technologies. There may be alternate, preferred, or superior technology available in the future to illuminate Digital Freeway Signs. These alternate technologies may be incorporated into existing legally permitted Digital Freeway Signs in the future without additional

RANCHO CORDOVA MUNICIPAL CODE, TITLE 23 - ZONING CODE

Article 7 – Site Planning and Development Standards

permissions from the City Council so long as (i) the requisite maximum brightness standards are met and (ii) no exterior physical change to the Digital Display Area will occur. The owner is responsible for obtaining any required ministerial permits for technology improvements as required by applicable Code standards. The City will expedite any such required approvals for technology that is superior in energy efficiency over previous generations or types.

xiii. Community Messaging. The City shall be provided with access to a portion of the total available display time to allow the City to present messages of community interest. This access shall also include other appropriate agencies for the purpose of displaying public safety messages such as "Amber Alert" messages and emergency-disaster communications.

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xii.xiv. Quality and Maintenance Plan. The applicant shall establish a quality and maintenance plan in order to ensure implementation of all above listed development standards and to assure the proper maintenance and repair of the Digital Freeway Sign as needed.

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2. Billboard Removal. For every one (1) Digital Freeway Sign installed, the Applicant must permanently remove at least four legally existing Billboards within the City prior to operation of the Digital Freeway Sign. An existing Billboard being refurbished as a Digital Freeway Sign may count as one of the four required permanent removals.

3. Operating Agreement. At the Applicant's request, the City and Applicant may enter into an Operating Agreement in conjunction with the issuance of a Conditional Use Permit for a Digital Freeway Sign. The City and Applicant may use the Operating Agreement, on a case-by-case basis, to deviate from the development standards in Section 23.743.150(C)(1) or reduce the required Billboard removals under Section 23.743.150(C)(2). The City Council will only approve an Operating Agreement if it determines that the Operating Agreement achieves community benefits that are equivalent to those that would be achieved through strict compliance with Section 23.743.150(C)(1) or Section 23.743.150(C)(2).

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2. An Operating Agreement between the City and the applicant is required prior to, or in conjunction with the issuance of a Conditional Use Permit for a Digital Freeway Sign. Operating Agreements may include, but are not limited to, provisions that address:

- (i) the permanent removal of at least one legally existing billboard within the City;
- (ii) City access to a portion of the total available display time to allow the City, at the discretion of the applicant, to present messages of community interest;
- (iii) the provision of access to the City and other appropriate agencies for the purpose of displaying public safety messages such as "Amber Alert" messages and emergency-disaster communications; and

RANCHO CORDOVA MUNICIPAL CODE, TITLE 23 - ZONING CODE**Article 7 – Site Planning and Development Standards**

~~(iv) the establishment of a Quality and Maintenance Plan in order to ensure implementation of the development standards set forth in Subdivision (C) of this Chapter.~~

MEMORANDUM



DATE: December 17, 2012

TO: Honorable Mayor and Council Members

FROM: William Campbell, Principal Planner

SUBJECT: SAFEWAY FUELING CENTER #1746 CONDITONAL USE PERMIT AND DESIGN REVIEW; PROJECT NO. DD7653 – LOCATED AT 10605 FOLSOM BOULEVARD.

PROPERTY OWNER: Trestle Cordova II, LLC 419 Waverly Street Palo Alto, CA 94301 John McNellis	APPLICANT/ARCHITECT: LHB and Associates 867 Pacific Street San Luis Obispo, CA 93401 Robert (J.R.) Beard
PROJECT:	Safeway Market is requesting eight (8) multi-product fueling dispensers under a 6,615 square foot canopy, along with a 700 square foot convenience store on the site of the former BBQ restaurant. The fueling station requires a Use Permit per the Folsom Boulevard Specific Plan and the project requires Design Review by the City Council. No alcoholic beverages will be sold from the convenience store.
FILE:	DD7653
LOCATION:	10605 Folsom Boulevard
APN:	057-0240-030
PLANNER:	William Campbell

RECOMMENDATION

Adopt Resolution 120-2012.

RESULT OF RECOMMENDED ACTION

Adoption of this resolution will allow construction of a new fueling station and convenience store to be operated by Safeway. The new development will remove an old vacant building off the Boulevard and upgrade the appearance of that portion of the Folsom Boulevard Specific Plan.

ADVANCES GOALS: 1, 2 and 6

BACKGROUND

Safeway Markets proposes to install a fueling center, with support convenience shop, within the Commercial Mixed Use zone of the Folsom Boulevard Specific Plan (FBSP). The subject property is outside of any Regulating Plan area or "Pulse Point" of the FBSP, wherein all new development would be subject to the normal development standards found within the Zoning Code and not the "Form Based" provisions. The new fueling station will require a Use Permit for the drive through fueling station and design review for the new canopy and cashier/convenience store. No alcoholic beverages will be sold from the convenience store.

The existing vacant building (formerly the BBQ Pit) will be razed and the new fueling center installed. The project consists of 8 multi product dispensers under a 6,615 square foot canopy, along with a 700 square foot convenience shop that will house the cashier and convenience items. No alcohol will be sold from the convenience store. The new fueling station will be linked to the larger Safeway Market parking lot and will have direct access to Folsom Boulevard, along with access to Barbera Way.



The proposed project is bounded by a bank to the east and a tire shop to the west. As symbolized with the “*star*”, the three residential properties to the north are currently used for large family home care by a local care provider. These properties are zoned Residential, as such, the Zoning Code would require the construction of a solid masonry wall to separate the fueling station from the most adjacent residential use. Currently, a wood fence separates the subject property and the commercial center from the residential neighborhood (see Figure 1 and 2 below).



FIGURE 1- LOOKING NORTHWEST



FIGURE 2 - LOOKING NORTHEAST

Use Permit

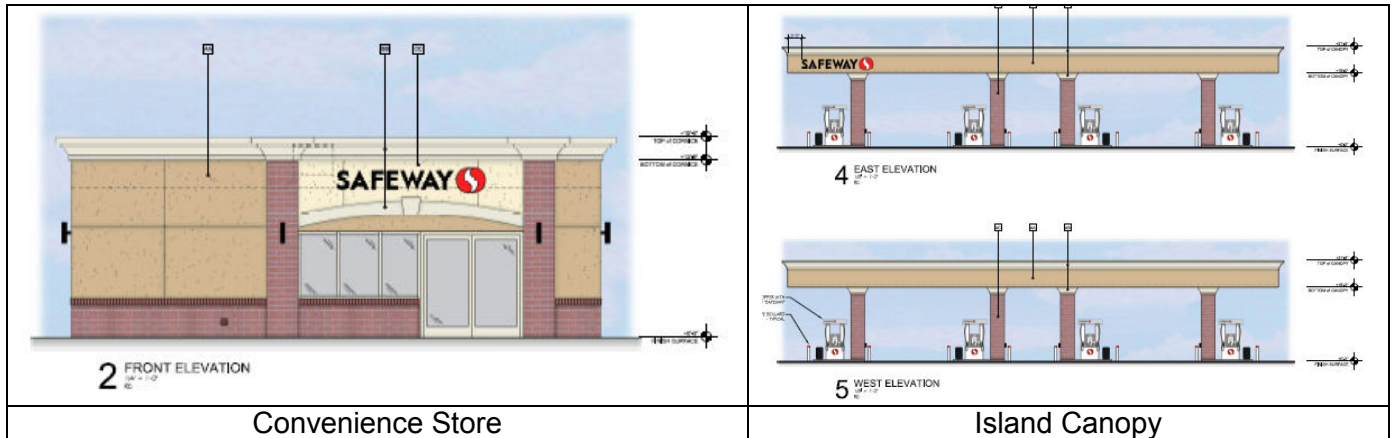
In accordance with Zoning Code Section 23.134, the new fueling station must obtain a Conditional Use Permit and would be subject to the development standards listed in Section 23.913.030 E of the Zoning Code. The development package has been reviewed using the listed development standards in subsection (E) and has been determined to be in conformance with the requirements for street frontage, island spacing, driveway access, landscaping, sign program, and structure height.

The Zoning Code requires a masonry wall along the property line that would separate the residential from the commercial. Staff is aware of a water main location adjacent to the subject property line, which is shared with this project and the residential property (see Exhibit A, page C1). Staff cannot unilaterally remove the requirement, but staff does recommend the City Council exempt the requirement for a masonry wall as part of the approval package. If a wall was built outside of the easement, within the subject property, a 5 foot no-man's land strip between the new wall and the existing fence would be created. The wall condition is in the draft conditions; however staff would recommend the Council remove this condition and allow the current wood fence to remain in this case.

Safeway has indicated the proposed hours of operation will be between 5AM and 11PM, Monday through Sunday. The City does not have a standing restriction for 24 hour businesses; however, due to the close proximity to residential property directly north of the subject property placing a limit on the hours of operation would be prudent. The store is currently open from 5AM to Midnight, therefore the fueling station would close

down one hour prior to the store. A condition has been added to limit the hours of operation from 5AM to 11PM, within **Exhibit B** of the resolution.

The required findings and the evidence to support the Use Permit are contained in Resolution No. 120-2012 (**Attachment 1**).



Design Review Findings

In accordance with Zoning Code Section 23.140, new commercial projects must obtain Design Review approval. The proposed plans were evaluated for consistency with the Zoning Code and the Design Guidelines for new commercial buildings. Design Review approvals shall be granted only when all of the findings defined in Zoning Code Section 23.140.050 can be made. The required findings and the evidence to support them are contained in Resolution No. 120-2012 (**Attachment 1**).

Environmental Review

Staff reviewed the applicant's assessment questionnaire at the early stages of review and raised the only potentially significant issue of traffic generation by the new use and its impacts on the existing condition. Public Works was consulted to determine if a traffic study was warranted, which would be made part of the environmental assessment. Based on the information provided, Public Works determined the estimated trip generation of vehicles for the new use would not require a traffic study; therefore, based on the previous EIR for Folsom Boulevard Specific Plan, staff recommends the Council find that the project is Categorically Exempt (15332 Infill) from review under CEQA.

RECOMMENDED MOTION

Move the City Council determine the project is consistent with the Environmental Impact Report prepared for the Folsom Boulevard Specific Plan, which adequately addressed the environmental impacts for small in-fill projects, and is therefore Categorically Exempt from further environmental review subject to Section 15332 of the California Environmental Quality Act; and adopt Resolution No. 120-2012 approving the Conditional Use Permit and the Design Review to operate a Safeway fueling station, subject to the attached Design Review Package (**Exhibit A**) and Conditions of Approval (**Exhibit B**).

ATTACHMENTS

1. Resolution 120-2012 including the Design Package (**Exhibit A**) and the Conditions of Approval (**Exhibit B**).
2. 500' radius map and mailing labels.

ATTACHMENT 1

CITY OF RANCHO CORDOVA

RESOLUTION NO. 120-2012

**A RESOLUTION OF THE CITY COUNCIL APPROVING
A SAFEWAY FUELING CENTER, PROJECT NO. DD7653**

WHEREAS, Safeway Inc. (hereinafter referred to as Applicant) filed an application with the City of Rancho Cordova for a Conditional Use Permit and Design Review for a drive up fueling center. The project is located at 10605 Folsom Boulevard. (Assessor's Parcel Number: 057-0240-030); and

WHEREAS, the City Council is the appropriate authority to hear and take action on this project; and

WHEREAS, the City Council of the City of Rancho Cordova has conducted a properly noticed public hearing pursuant to Government Code Section 65090 and has duly considered all written and verbal testimony presented during the hearing.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA
HEREBY RESOLVES AS FOLLOWS:**

- A. Determine that the project site was adequately analyzed according to the California Environmental Quality Act (CEQA) Guidelines and is consistent with the Environmental Impact Report prepared for the Folsom Boulevard Specific Plan and is Categorically Exempt under Section 15332, In-Fill Development, as supported by the following Findings and Evidence:
 - A. *Finding: The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations. Evidence:* The project site is designated Commercial Mixed Use (CMU) in both the General Plan and the Folsom Boulevard Specific Plan. The proposed building is consistent with the Folsom Boulevard Specific Plan and its development standards for a fueling station according to Section 23.913.030 E of the Zoning Code.
 - B. *Finding: The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses. Evidence:* The project site is approximately .86 acres (37,331 square feet) and entirely surrounded by urban residential and commercial uses of similar scale and intensity.
 - C. *Finding: The project site has no value as habitat for endangered, rare or threatened species. Evidence:* The current site has been used by multiple uses over the years, most recently by a BBQ restaurant that has been vacant for more than 5 years. The subject property is totally surrounded by other commercial and residential buildings, therefore no special habitat will be removed as a product of this development.
 - D. *Finding: Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality. Evidence:* The new use will not generate new significant levels of traffic or noise impacts to the immediate area. The new project will improve the existing conditions related to on-site drainage and water quality by the new improvement measures required by the current codes.

ATTACHMENT 1

- E. Finding: *The site can be adequately served by all required utilities and public services.* Evidence: The site can be served by all required utilities that are currently in the area.
2. Approve the Conditional Use Permit, subject to the Conditions of Approval (see **Exhibit B**); supported by the following Findings and Evidence, as defined in Zoning Code Section 23.134.030;
- A. Finding: *The site size, dimensions, location, topography, and access are adequate for the needs of the proposed use, considering the proposed building mass, parking, traffic, noise, vibration, exhaust/emissions, light, glare, erosion, odor, dust, visibility, safety, and aesthetic considerations.* Evidence: The City Council finds that the site size, dimensions, location, topography, and access of the site are adequate for the proposed use and the new development will not have a negative effect on the surrounding area. This finding has been met.
- B. Finding: *Any negative impacts of the proposed use on adjacent properties and on the public can be mitigated through application of other Code standards or other reasonable conditions of approval.* Evidence: The City Council finds that any negative impacts of the proposed fueling station have been reduced to a less than significant level by the placement of the facility, landscaping to screen views by sensitive users and through the application of Code standards and the attached Conditions of Approval. This finding has been met.
- C. Finding: *All required public facilities have adequate capacity to serve the proposal.* Evidence: The City Council finds that all required public facilities have adequate capacity to serve the Project. Currently, all public facilities are adequately serving the existing site. This finding has been met.
- D. Finding: *The project meets the requirements of the Zoning Code including development standards, design guidelines, and special use provisions.* Evidence: The City Council finds the project is consistent with all the requirements of the Zoning Code Section 23.913.030 E that specifically addresses the development of fueling stations. The conditions of approval will provide additional assurance that the new use will not negatively impact the area. This finding has been met.
- E. Finding: *If structures and site plans are considered nonconforming, the elements of a project that are nonconforming have been brought into compliance with the Zoning Code.* Evidence: Due to the fact the old structures will be totally removed, there will be no nonconforming elements of this Project as identified in paragraph D above. This finding has been met.
3. Approve the Design Review, subject to the Design Package (see **Exhibit A**) and the Conditions of Approval (see **Exhibit B**); supported by the following Findings and Evidence, as defined in Zoning Code Section 23.140.050;
- A. Finding: *The proposed project is consistent with the objectives of the General Plan, complies with applicable zoning regulations, Specific Plan provisions, and Special Planning Area provisions, and is consistent with the applicable Rancho Cordova Design Guidelines.* Evidence: The project is consistent with the goals and objective of the General Plan and Folsom Boulevard Specific Plan. This project is consistent with the adopted design guidelines of the City and the development standards in the Zoning Code Section 23.913.030 E.

ATTACHMENT 1

- B. *Finding: The proposed architecture, site design, and landscape are suitable for the purposes of the building and the site and will enhance the character of the neighborhood and community. Evidence: The fueling station is a modest improvement to the Folsom Boulevard frontage with a 6,615 square foot canopy to cover the dispensing islands and a 700 square foot convenience store. The site plans primary function is fuel vehicles and provide the ease of ingress and egress onto the street pattern. These operations are mostly paved surfaces with very little structure improvement to the site and perimeter landscaping to help screen the operation from the adjoining uses. Fueling stations are typically located on corner lots, but in this case the property is connected to a major shopping center and has two public frontages on Folsom Boulevard and Barbera Way. The convenience store is centrally located within the site to allow the teller visual access to the fueling stations.*
- C. *Finding: The architecture, including the character, scale, and quality of the design, relationship with the site and other buildings, building materials, screening of exterior appurtenances, exterior lighting and signing, and similar elements establishes a clear design concept and is compatible with the character of existing or anticipated buildings on adjoining and nearby properties. Evidence: The proposed convenience store is architecturally compatible with other recent designs approved in the Folsom Boulevard area. The canopy structure is low profile and shares some of the architectural detailing of the store. As there is no adopted design scheme for the immediate area, the store and pump island canopy are unique to their form and function.*
- D. *Finding: The proposed project will not create conflicts with vehicular, bicycle, or pedestrian transportation modes of circulation. Evidence: Site circulation will remain generally the same as the new use will not affect the existing ingress or egress to the site. The amount and duration of traffic into and out of the site will incrementally increase over the previous use, but below the peak hour thresholds establish by the City to warrant the preparation of a traffic study. The new project will not interfere with existing bicycle paths or transit routes along Folsom Boulevard. The new site plan does provide for better pedestrian access to the property by adhering to the ADA standards.*

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the ____ day of _____, 2012 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

 Linda Budge, Mayor

ATTEST:

 Mindy Cuppy, CMC, City Clerk



SAFeway

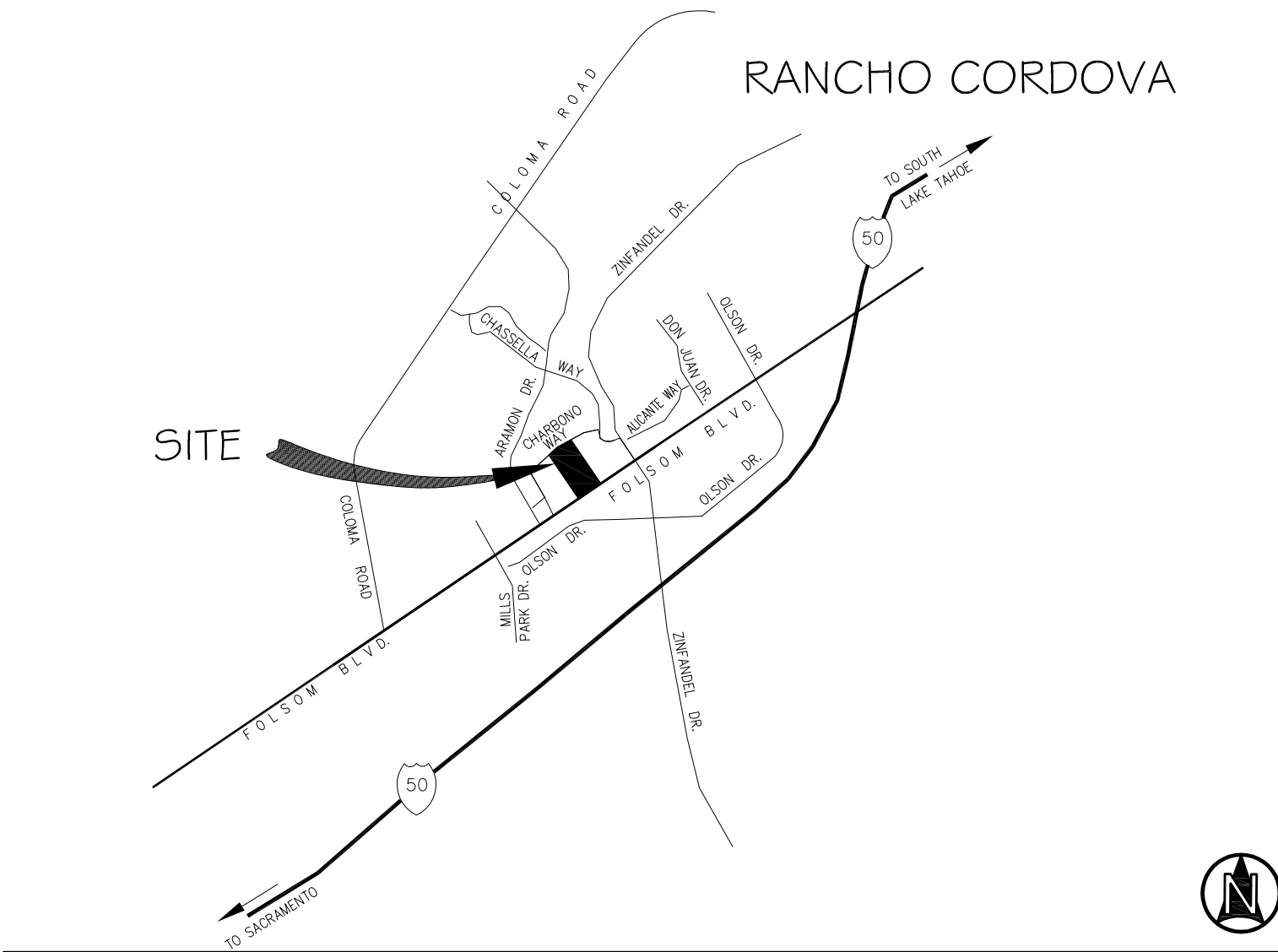
PROPOSED FUELING CENTER

FOR
SAFeway STORE NO. 1746
10605 FOLSOM BOULEVARD
RANCHO CORDOVA, CALIFORNIA

INDEX OF DRAWINGS

NO.	SHT.	CONTENT
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03	C2	PRELIMINARY SITE PLAN
04	C3	PRELIMINARY GRADING, DRAINAGE, AND UTILITY PLAN
05	A1	PRELIMINARY KIOSK FLOOR PLAN AND EXTERIOR ELEVATIONS
06	CA1	PRELIMINARY CANOPY PLAN AND EXTERIOR ELEVATIONS
07	L1	PRELIMINARY LANDSCAPE PLANTING PLAN
08	SGN1	PRELIMINARY SIGNAGE PROGRAM

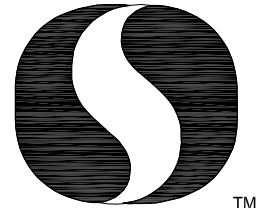
VICINITY MAP



PROJECT DIRECTORY

SAFeway, INC. 5918 STONERIDGE MALL ROAD PLEASANTON, CA 94588-3229 TEL: (925) 467-2060 FAX: (925) 467-2060 CONTACT: MARY DAVI	ARCHITECT/AGENT LHB & ASSOCIATES, LTD. 867 PACIFIC STREET, SUITE 120 SAN LUIS OBISPO, CALIFORNIA 93401 TEL: (805) 540-5240 FAX: (805) 540-5241 CONTACT: JR BEARD	CIVIL ENGINEER LHB & ASSOCIATES, LTD. 867 PACIFIC STREET, SUITE 120 SAN LUIS OBISPO, CALIFORNIA 93401 TEL: (805) 540-5240 FAX: (805) 540-5241 CONTACT: JR BEARD
---	--	---

EXHIBIT A



SAFeway

STAMP

REVISION SCHEDULE
DELTA NUMBER DATE

BASED ON CRITERIA MASTER
ISSUED: 03/25/11

SUBMITAL DATES

OWNER: SAFeway

BUILDING DEPT:

O.T.B.:



architecture
engineering

LHB & Associates, Ltd.

867 Pacific Street, Suite 120
San Luis Obispo, CA 93401
ph 805.540.5240
fax 805.540.5241
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PROJECT NO.
11-10-1746
DRAWN BY:
JRB
CHECKED BY:
JRB

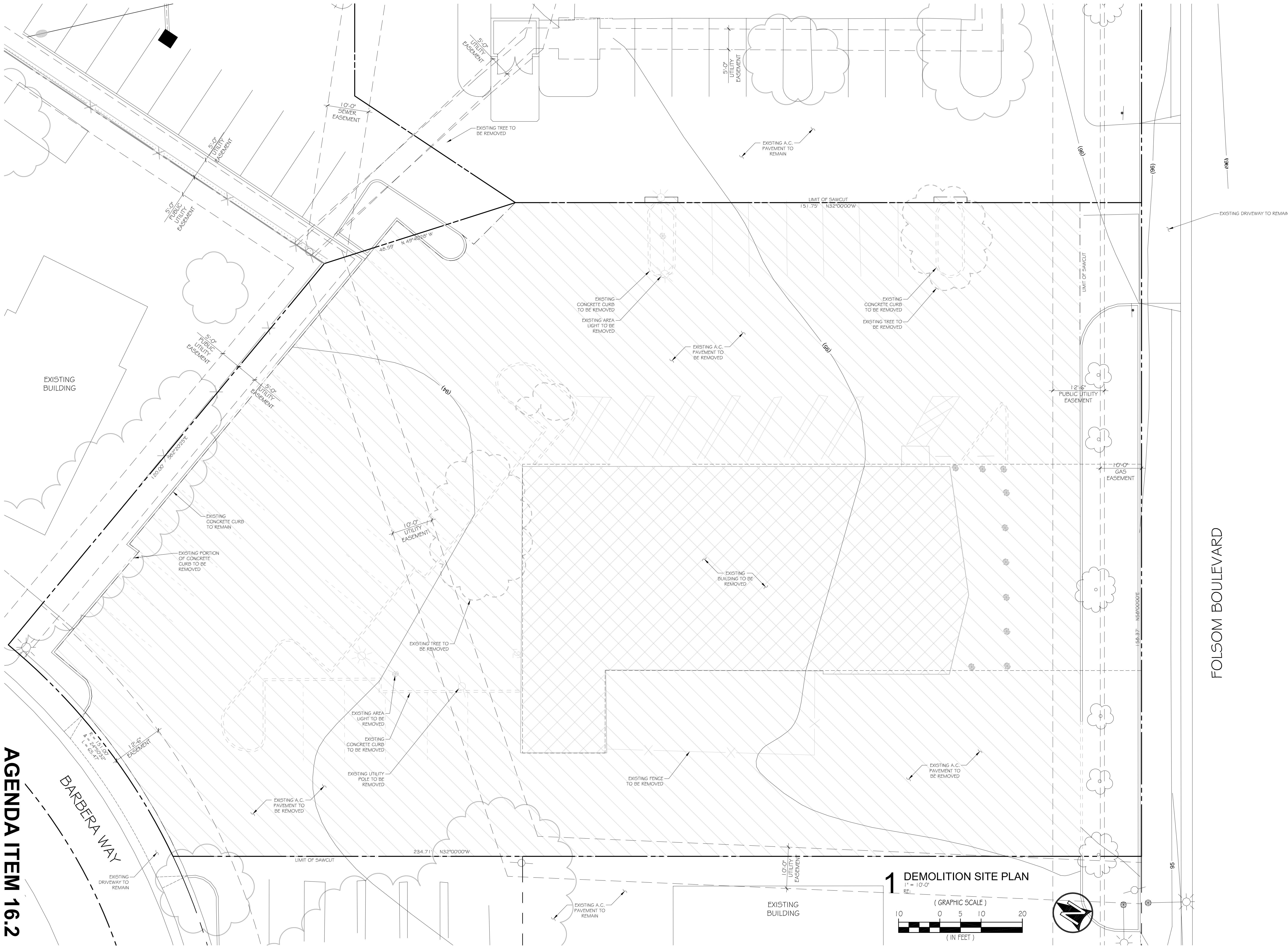
SAFEWAY #1746

ACTIVITY ID. 25-1746-000-0001

10605 FOLSOM BOULEVARD

RANCHO CORDOVA, CA 95670

SHEET TITLE
COVER SHEET



AGENDA ITEM 16.2

REVISION SCHEDULE		
DELTA	NUMBER	DATE

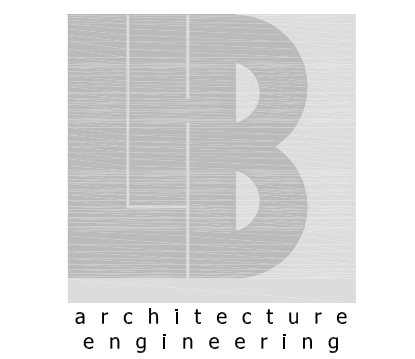
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ISSUED: 03/25/11

SUBMITAL DATES

OWNER: SAFeway

BUILDING DEPT:

O.T.B.:

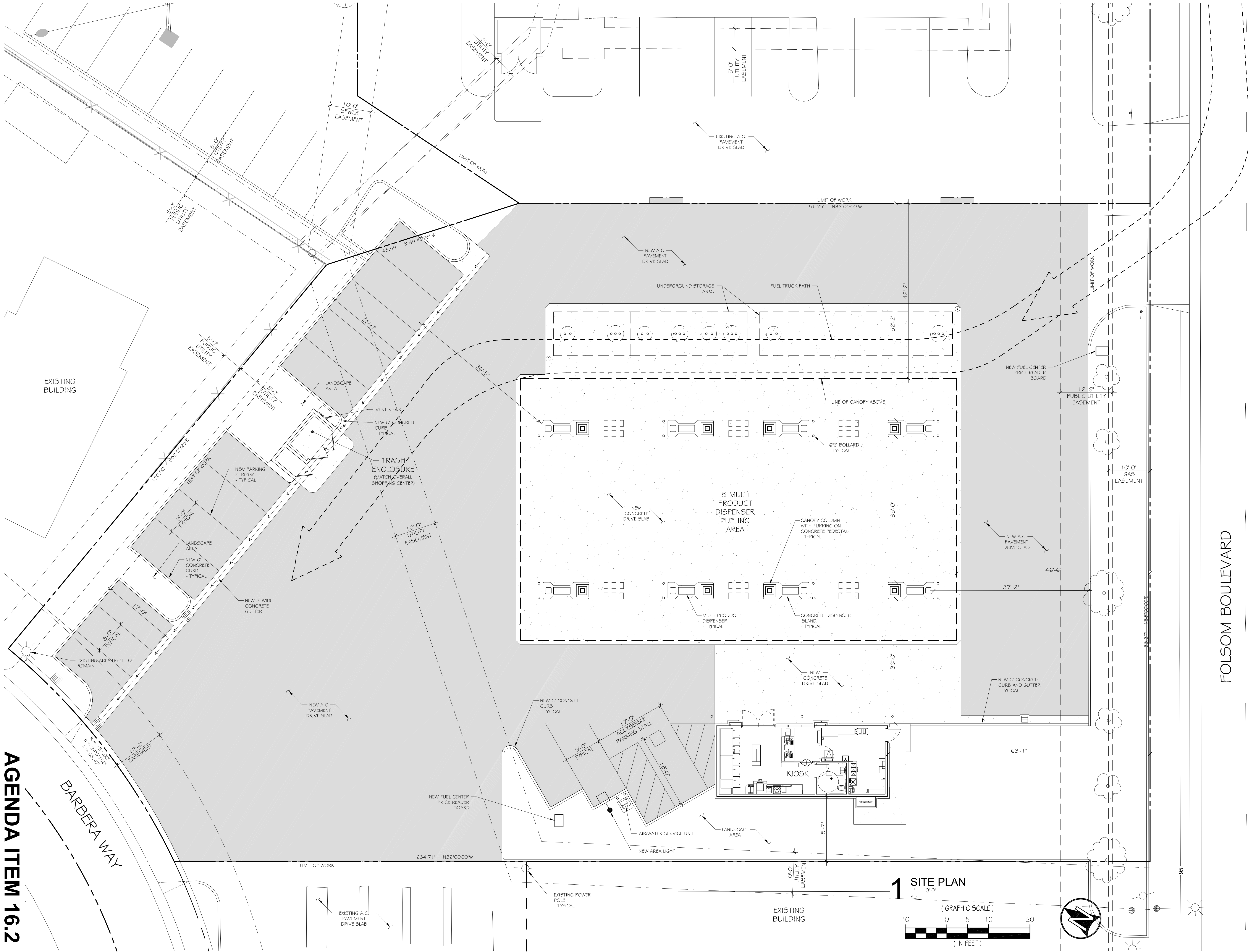


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CHECKED BY:	JRB

SAFEWAY #1746
ACTIVITY ID. 25-1746-000-0001
10605 FOLSOM BOULEVARD
RANCHO CORDOVA, CA 95670

SHEET TITLE
DEMOLITION
SITE PLAN



REVISION SCHEDULE		
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BASED ON CRITERIA MASTER
ISSUED: 03/25/11

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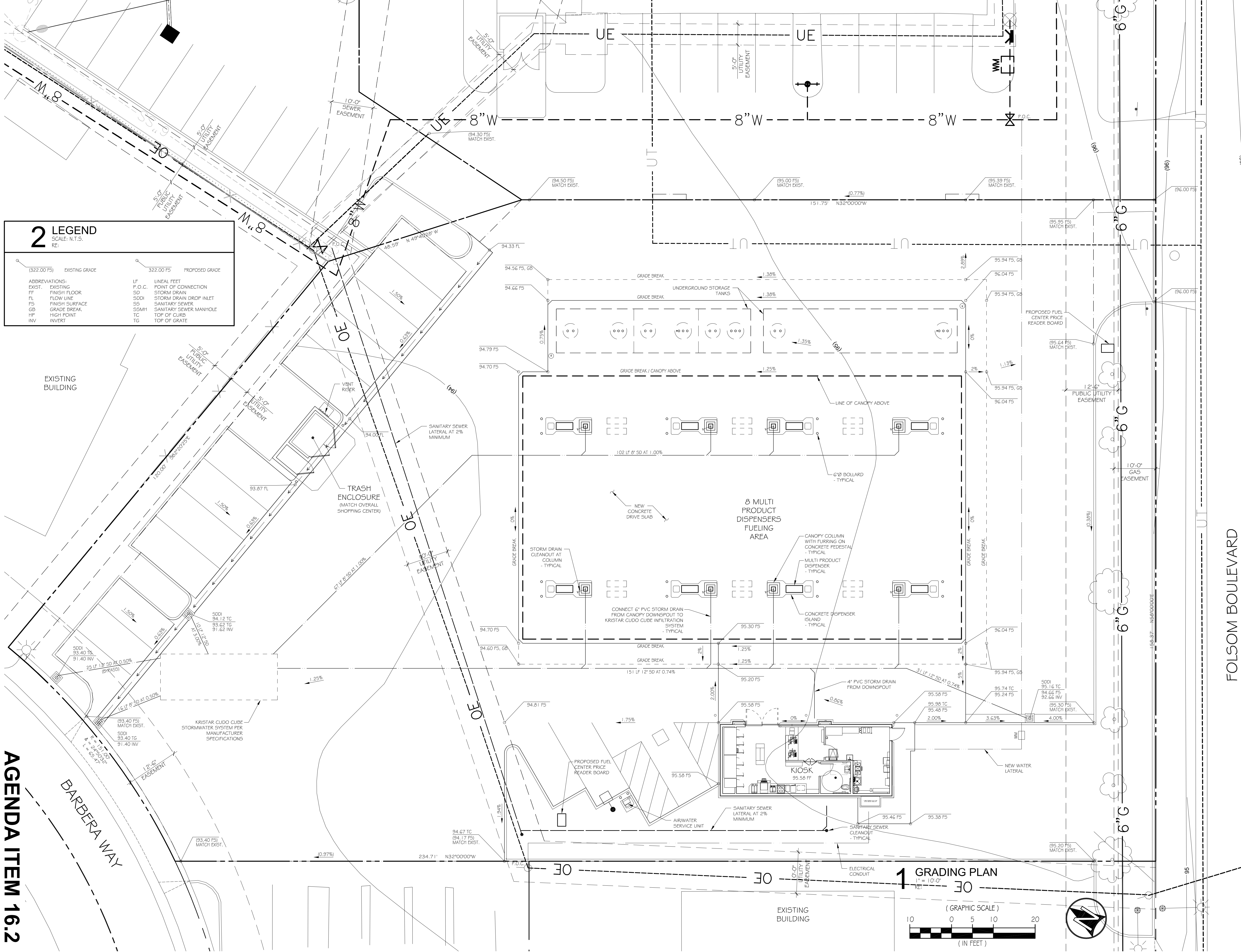
SAFEWAY #1746

ACTIVITY ID. 25-1746-000-0001

10605 FOLSOM BOULEVARD

RANCHO CORDOVA, CA 95670

SHEET TITLE
PRELIMINARY
SITE PLAN



2 LEGEND

SCALE: N.T.S.
RE:

(322.00 FS)

EXISTING GRADE

322.00 FS

PROPOSED GRADE

ABBR: EXIST.

EXISTING

FF

FINISH FLOOR

FL

FLOW LINE

FS

FINISH SURFACE

GB

GRADE BREAK

HP

HIGH POINT

INV

INVERT

LF

LINEAL FEET

P.O.C.

POINT OF CONNECTION

SD

STORM DRAIN

SDDI

STORM DRAIN DROP INLET

SS

SANITARY SEWER

SSMH

SANITARY SEWER MANHOLE

TC

TOP OF CURB

TG

TOP OF GRATE

AGENDA ITEM 16.2

BARBERA WAY

1 GRADING PLAN

1" = 10'-0"

RE:

(GRAPHIC SCALE)

10 0 5 10 20

(IN FEET)

EXHIBIT A


SAFeway™
STAMP

REVISION SCHEDULE

DELTA NUMBER DATE

BASED ON CRITERIA MASTER
ISSUED: 03/25/11

SUBMITAL DATES

OWNER: SAFeway

BUILDING DEPT:

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PROJECT NO. 11-10-1746

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CHECKED BY: JRB

SAFEWAY #1746

ACTIVITY ID. 25-1746-000-0001

10605 FOLSOM BOULEVARD

RANCHO CORDOVA, CA 95670

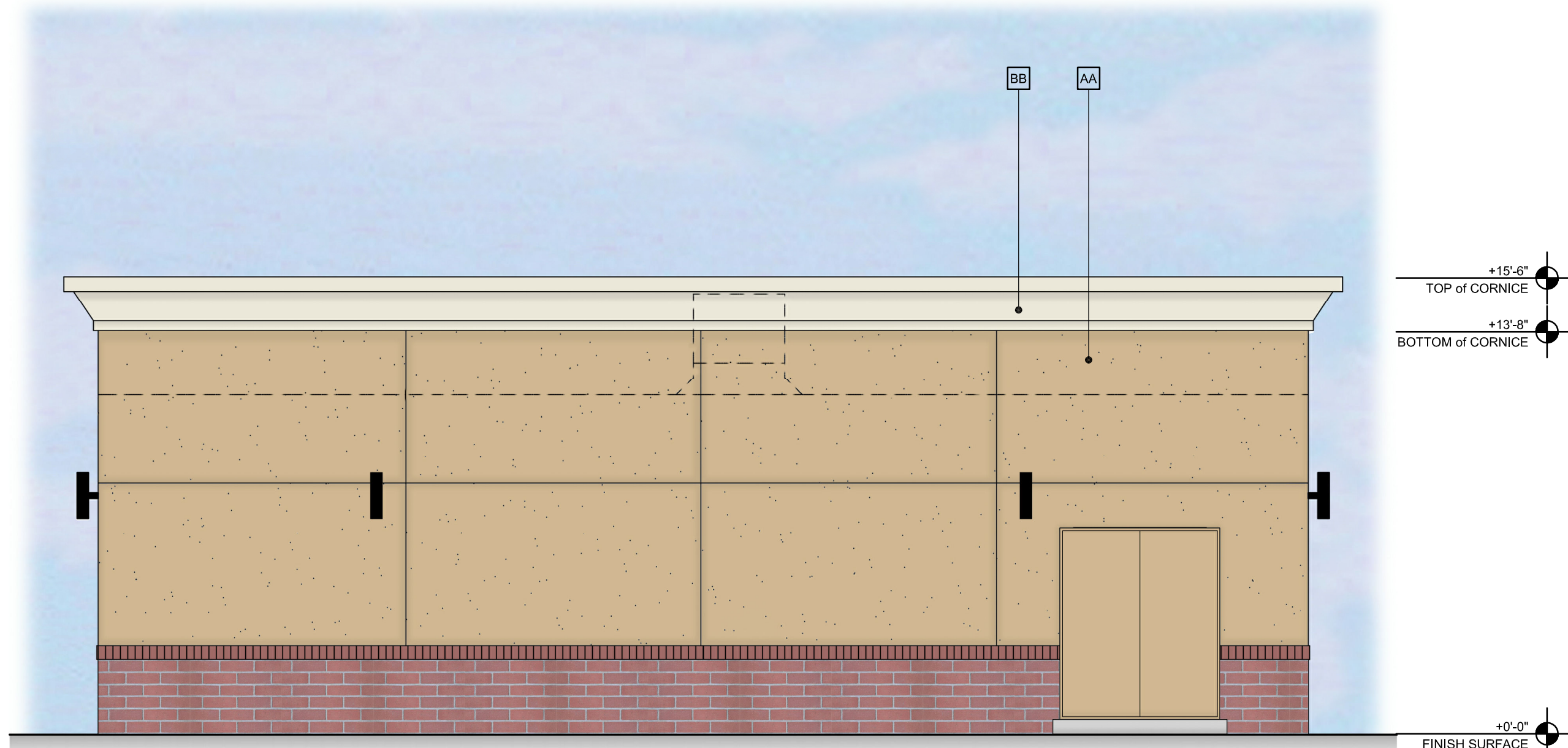
SHEET TITLE
PRELIMINARY
GRADING,
DRAINAGE, AND
UTILITY PLAN

SHEET N° 232

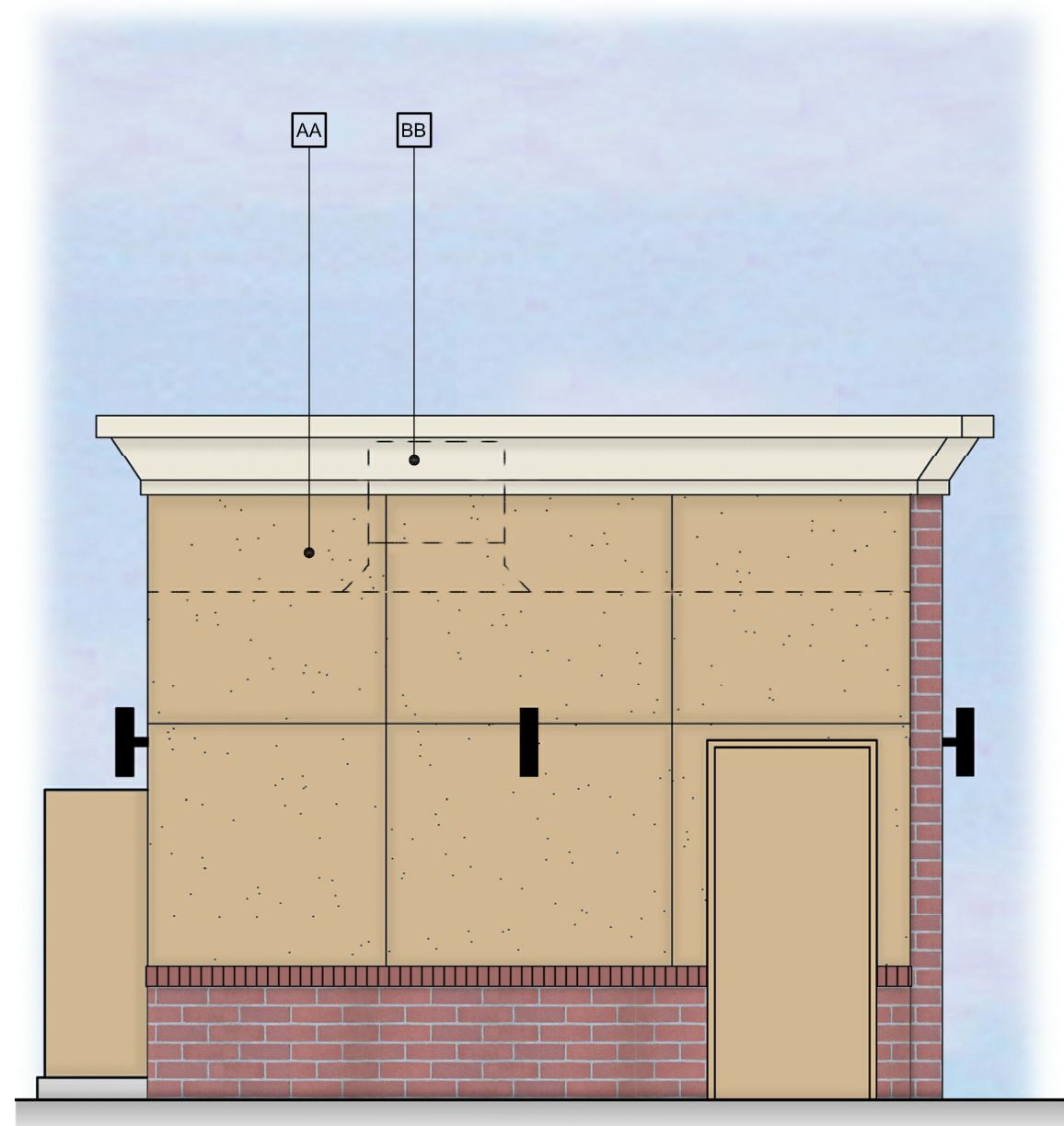
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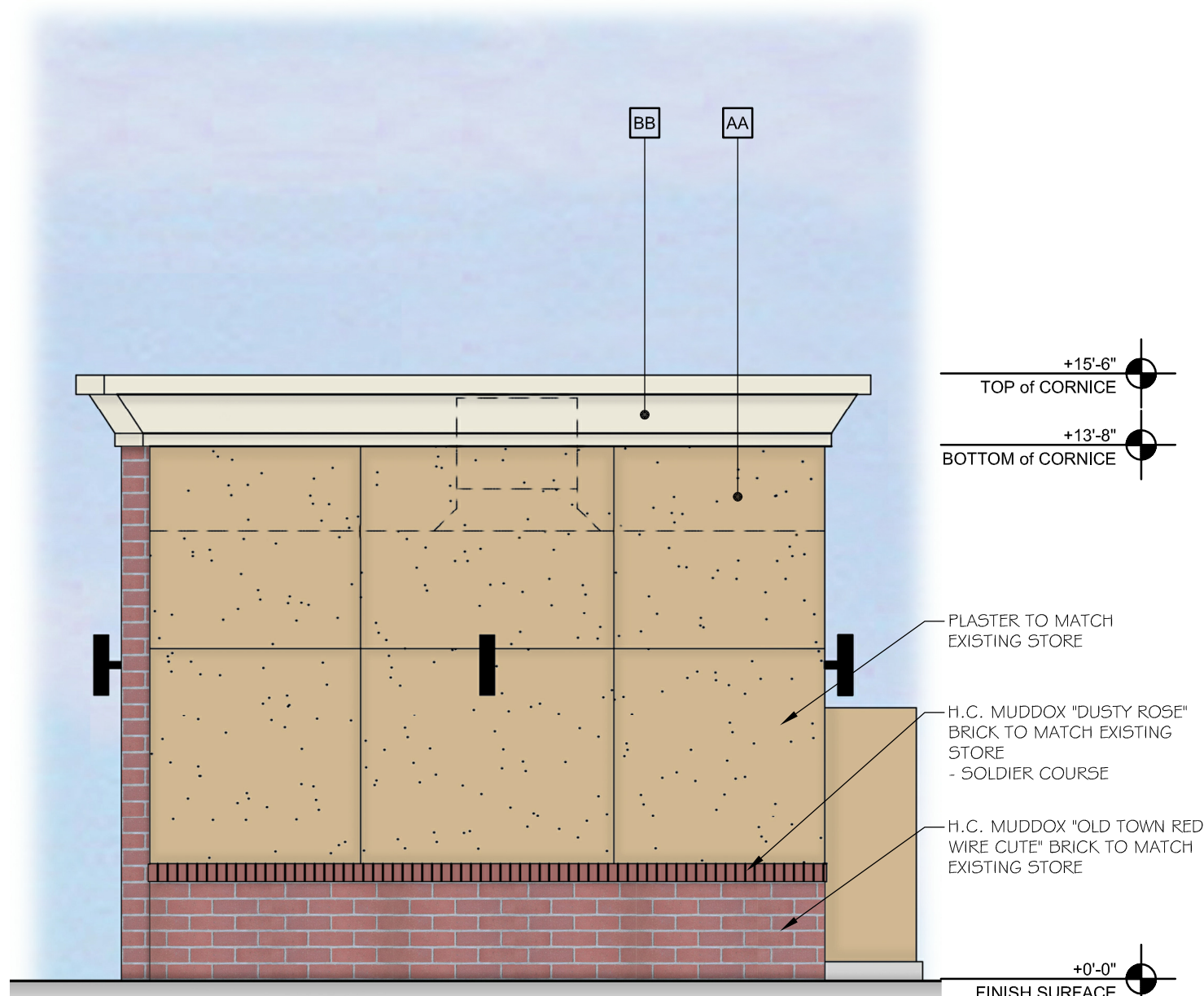
2 FRONT ELEVATION
1/4" = 1'-0"



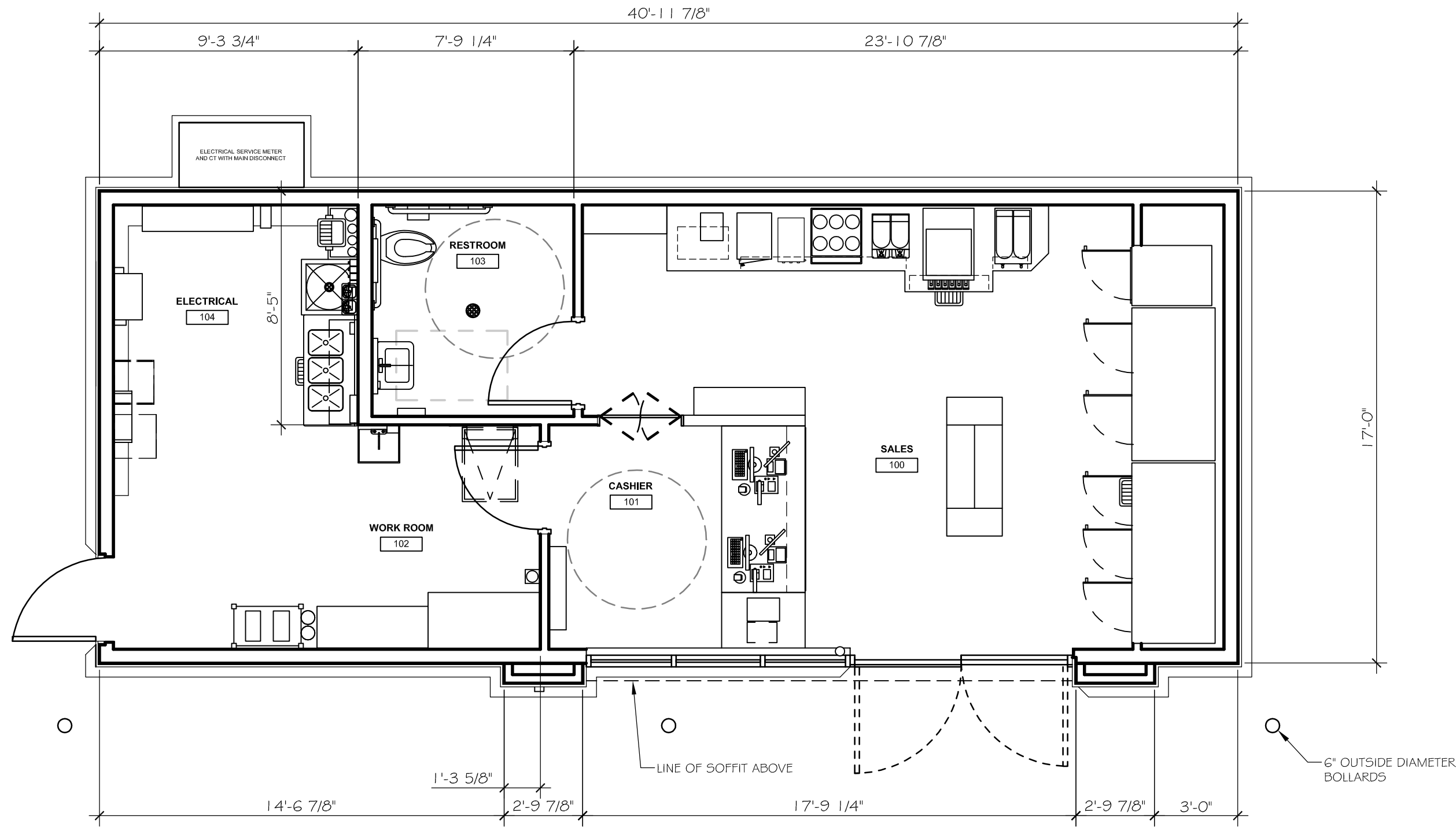
3 REAR ELEVATION
1/4" = 1'-0"



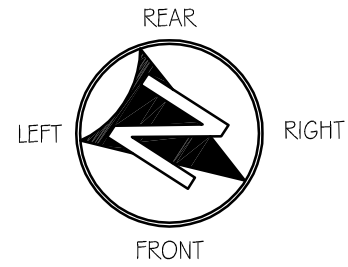
4 LEFT ELEVATION
1/4" = 1'-0"



5 RIGHT ELEVATION
1/4" = 1'-0"



1 FLOOR PLAN
1/4" = 1'-0"



6 COLOR SCHEME	
AA	ICI DULUX - "DESERT VALLEY" - ICI #620 - PLASTER.
BB	GLIDDEN - "PARCHMENT WHITE" - ICI #724 - FLAT FINISH.
CC	GLIDDEN - "SWISS COFFEE" - ICI #816 - PLASTER.
NOTE: COLORS SCHEME AND MATERIAL FINISHES ARE INTENDED TO MATCH THE EXISTING COLOR PALETTE AT THE SAFEWAY STORE.	

REVISION SCHEDULE		
DELTA	NUMBER	DATE

BASED ON CRITERIA MASTER
ISSUED: 03/25/11

SUBMITAL DATES

OWNER: SAFEWAY

BUILDING DEPT:

O.T.B.:

LHB
architecture
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PROJECT NO.
11-10-1746

DRAWN BY:
JRB

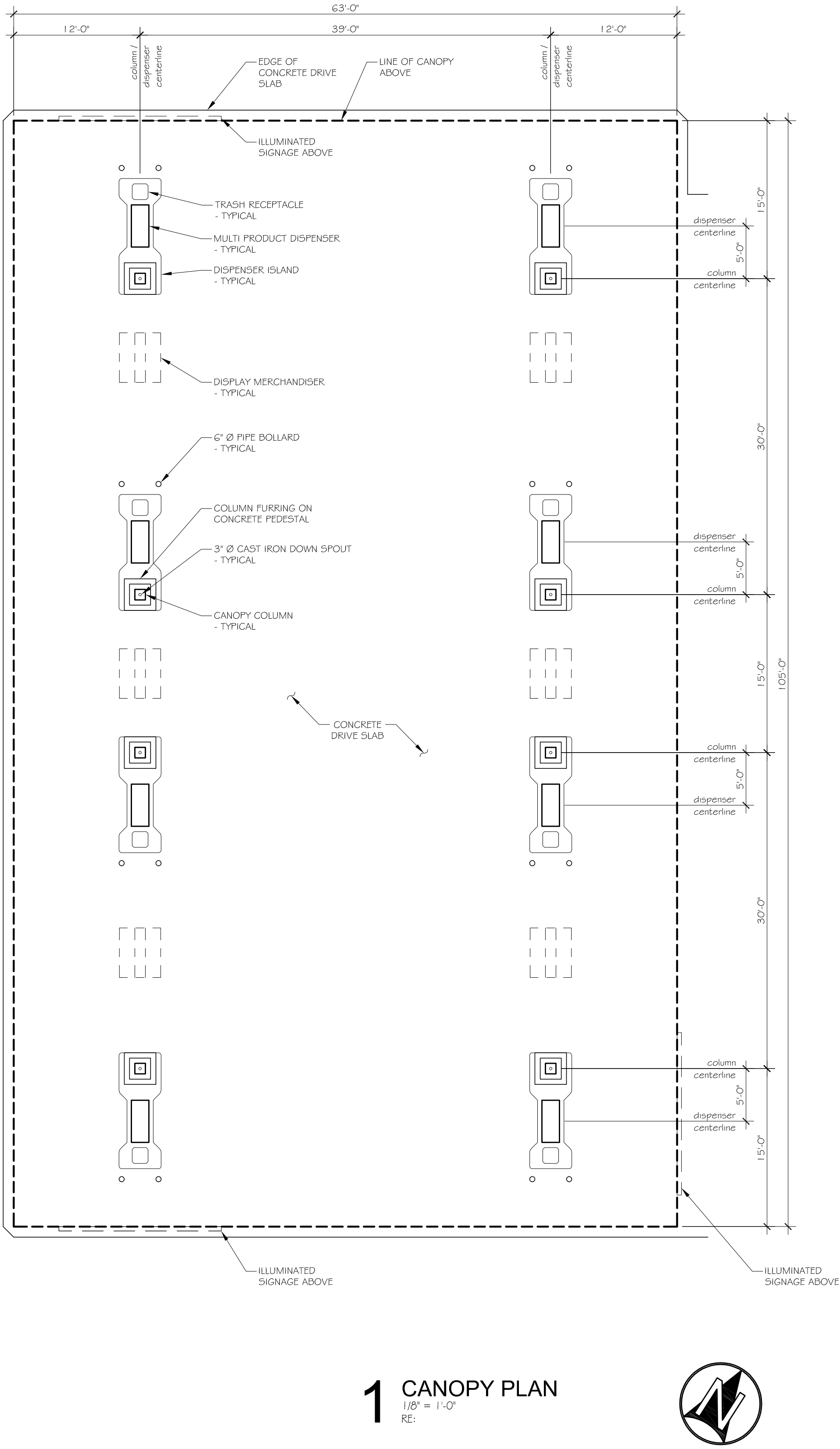
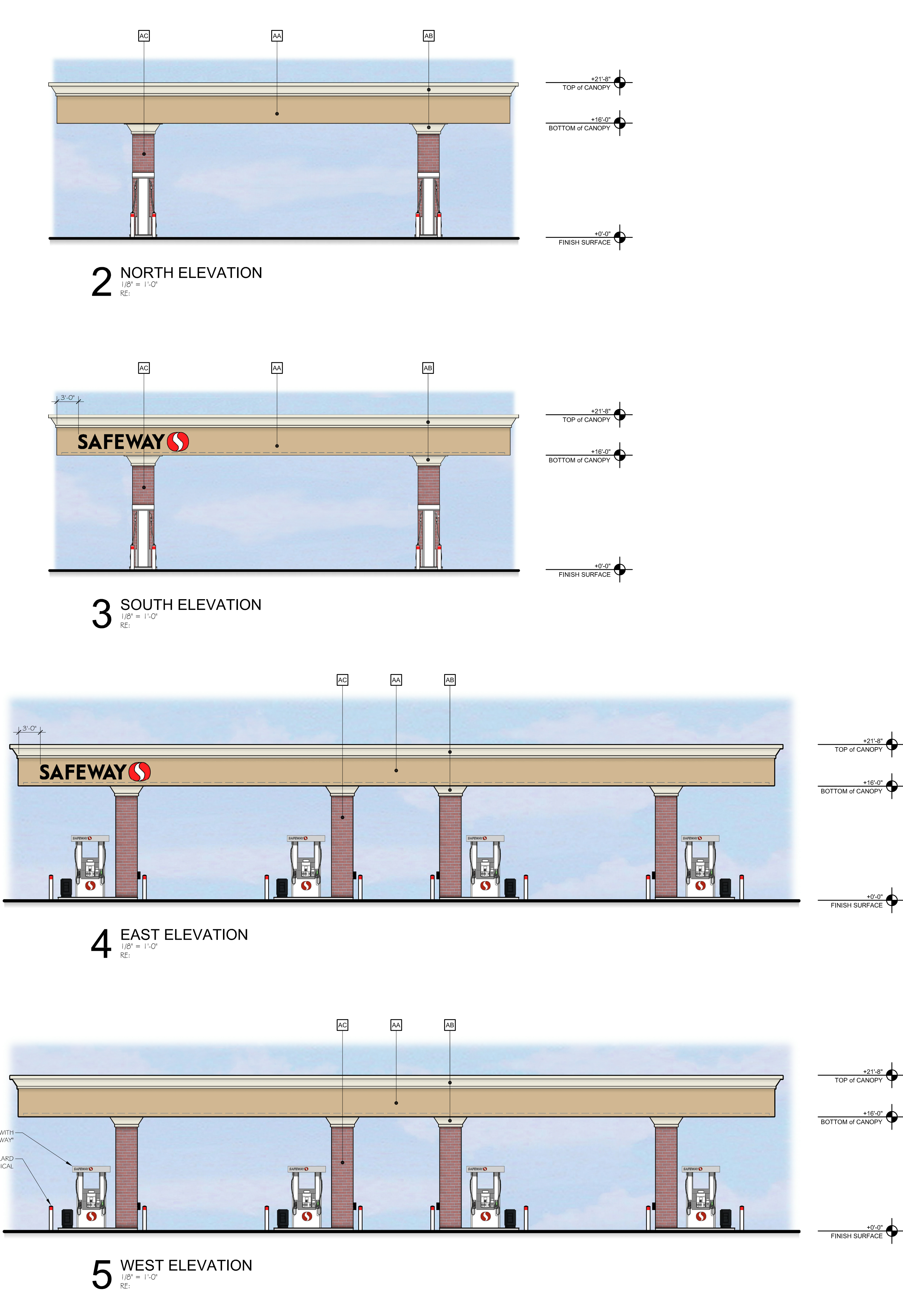
CHECKED BY:
JRB

SAFEWAY #1746

ACTIVITY ID. 25-1746-000-0001
10605 FOLSOM BOULEVARD
RANCHO CORDOVA, CA 95670

SHEET TITLE
KIOSK FLOOR
PLAN, AND
EXTERIOR
ELEVATIONS

SHEET NO.
A-233



6	COLOR SCHEME	RE:	No.
AA	ICI DULUX PAINT "DESERT VALLEY" - ICI #629.		
AB	GLIDDEN PAINT "PARCHMENT WHITE" - ICI #724.		
AC	H.C. MUDDOX "OLD TOWN RED WIRE CUT".		
NOTE:	COLORS SCHEME AND MATERIAL FINISHES ARE INTENDED TO MATCH THE EXISTING COLOR PALETTE AT THE SAFEWAY STORE.		

EXHIBIT A



SAFETYWAY

STAMP

REVISION SCHEDULE

DELTA	NUMBER	DATE

BASED ON CRITERIA MASTER

ISSUED: 03/25/11

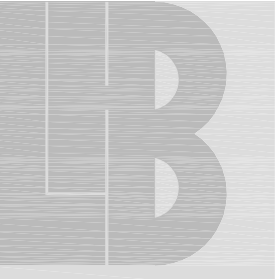
SUBMITAL DATES

OWNER:

SAFETYWAY

BUILDING DEPT:

O.T.B.:



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engineering

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11-10-1746

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SAFEWAY #1746

ACTIVITY ID. 25-1746-000-0001

10605 FOLSOM BOULEVARD

RANCHO CORDOVA, CA 95670

SHEET TITLE

CANOPY PLAN,
KIOSK FLOOR
PLAN, AND
EXTERIOR
ELEVATIONS

SHEET NO.

234

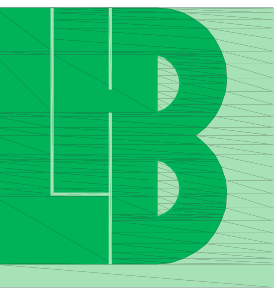
CA

11/02/12 11:43 AM



REVISION SCHEDULE		
DELTA	NUMBER	DATE

BASED ON CRITERIA MASTER		
ISSUED: 03/25/11		
SUBMITAL DATES		
OWNER: SAFEWAY		
BUILDING DEPT:		
O.T.B.:		



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PROJECT NO.	11-10-1746
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CHECKED BY:	JRB

SAFeway #1746

ACTIVITY ID. 25-1746-000-0001

10605 FOLSOM BOULEVARD

RANCHO CORDOVA, CA 95670

IRRIGATION NOTES

ALL PLANTS WILL BE WATERED BY AN AUTOMATIC IRRIGATION SYSTEM USING A DRIP SYSTEM. THE DESIGN OF THE IRRIGATION SYSTEM WILL COMPLY WITH CURRENT WATER USE CODES, RESTRICTIONS AND REGULATIONS.

WATER CONSERVATION TECHNIQUES:

1. CORRECTLY LOCATED IRRIGATION VALVE CIRCUITS TO CORRESPOND TO HYDROZONES.
2. DESIGNED IRRIGATION VALVE CIRCUITS TO ACHIEVE MATCHED PRECIPITATION RATES THROUGH HYDROZONES.
3. WILL USED DROUGHT TOLERANT PLANTS IN LANDSCAPE BEDS TO COMPLY WITH CURRENT WATER USE CODES, RESTRICTION AND REGULATIONS.
4. USING A DEEP, 3" LAYER OF MULCH IN PLANTING BEDS.
5. USING DRIP SYSTEM TO CONSERVE WATER.
6. USE A RAIN SENSOR TO TURN-OFF IRRIGATION SYSTEM DURING INCLEMENT WEATHER.
7. USE A "SMART" CONTROLLER CONNECTED TO LOCAL ET DATABASE FOR SEASONAL ADJUSTMENT.

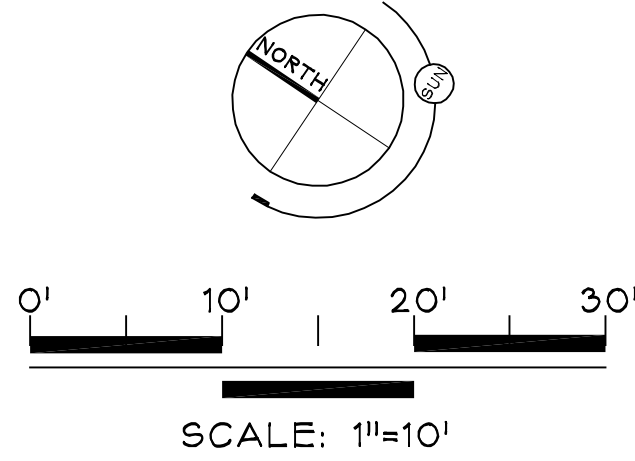
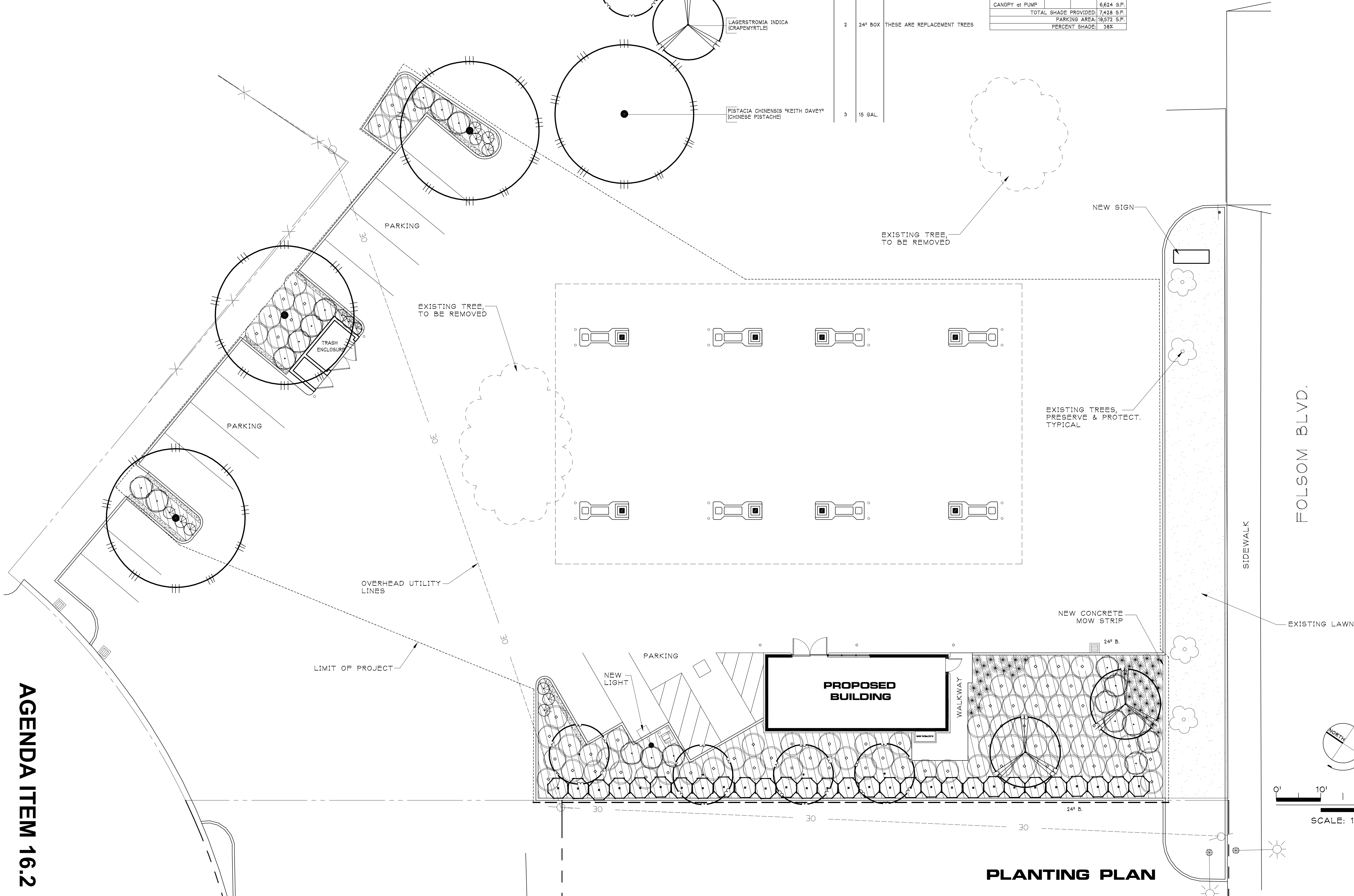
PLANT LEGEND

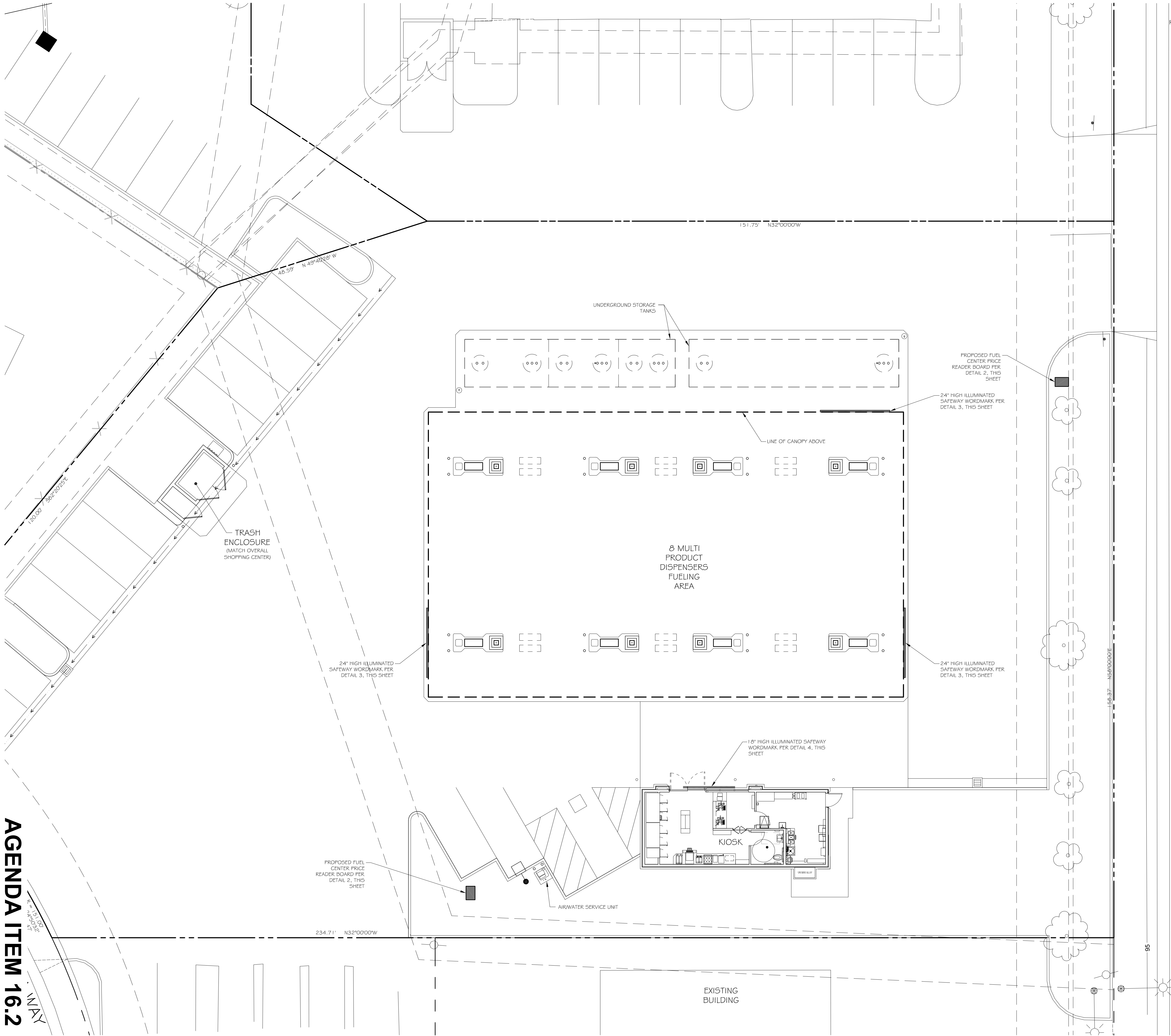
SYMBOL	PLANT NAME	QUANTITY	SIZE
	DIANELLA TASMANICA (TASMAN FLAX LILY)	50	1 GAL.
	DIETES BICOLOR (FORTNIGHT LILY)	13	1 GAL.
	CALLISTEMON "LITTLE JOHN" (DWARF BOTTLEBRUSH)	28	5 GAL.
	MYOPORUM PARVIFOLIUM (PROSTRATE MYOPORUM)	79	1 GAL.
	MAHONIA A. "COMPACTA" (DWARF OREGON GRAPE)	18	5 GAL.
	XYLOSMA CONGESTUM (SHINY XYLOSMA) - STANDARD FORM	4	15 GAL.
	LAGERSTROMIA INDICA (CRAPEMYRTLE)	2	24" BOX
	PISTACIA CHINENSIS "KEITH DAVEY" (CHINESE PISTACHE)	3	15 GAL.

GROUND COVERS

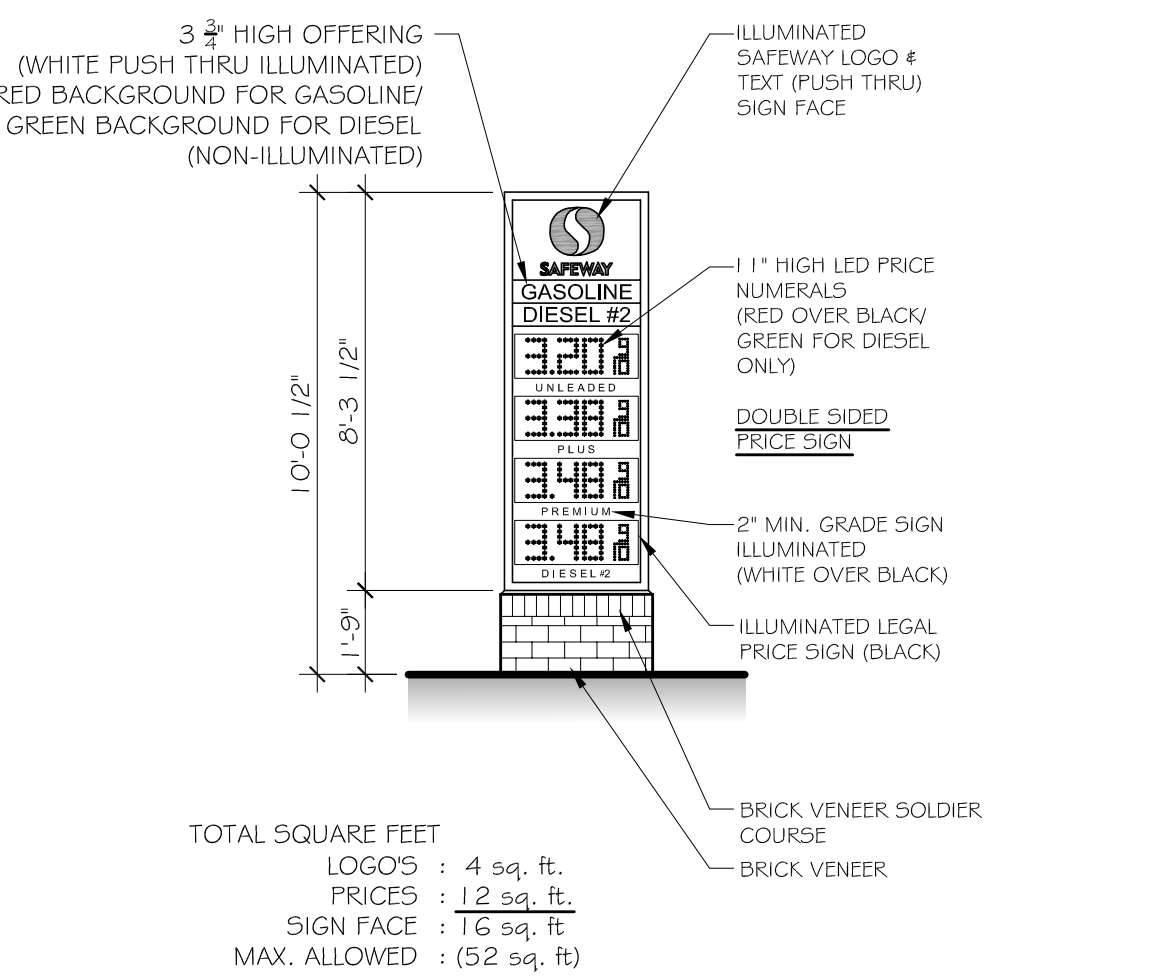
- 10" STRINGY REDWOOD BARK® MULCH, 3" DEEP LAYER WITH PER-EMERGENT HERBICIDE, SEE NOTES.
- D.G. (DECOMPOSED GRANITE) SURFACING 12" WIDE, 3" DEEP COMPACTED BAND AS SHOWN.

TREE CANOPY SIZE	COVERAGE %		TOTALS
	50%	25%	
32' DIA (804 S.F.)	1 at (402 S.F.)	2 at (402 S.F.)	804 S.F.
CANOPY at PUMP			6,624 S.F.
TOTAL SHADE PROVIDED			7,428 S.F.
PARKING AREA			19,572 S.F.
PERCENT SHADE			38%





FOLSOM BOULEVARD



2 SAFEWAY PRICE SIGN READER BOARD

1/4"=1'-0"

RE:

24" ILLUMINATED SAFEWAY SIGNAGE
SIGN AREA: 33.15 SQ. FT. PER SIGN



3 SAFEWAY WORDMARK - 24" HIGH

1/4"=1'-0"

RE:

18" ILLUMINATED SAFEWAY SIGNAGE
SIGN AREA: 18.64 SQ. FT. PER SIGN



4 SAFEWAY WORDMARK - 18" HIGH

1/4"=1'-0"

RE:

TOTAL SIGNAGE SQUARE FEET (FREE STANDING)		TOTAL SIGNAGE SQUARE FEET (BUILDING ATTACHED)	
SIGN LOCATION	TOTAL	SIGN LOCATION	TOTAL
MONUMENT SIGN LOGO / TEXT PRICING	8 sq. ft. 24 sq. ft.	CANOPY TEXT/ LOGO	100 sq. ft.
		KIOSK TEXT/ LOGO	19 sq. ft.
TOTAL SIGNAGE:	32 sq. ft.	TOTAL SIGNAGE:	119 sq. ft.
MAXIMUM ALLOWED:	52 sq. ft.	MAXIMUM ALLOWED:	125 sq. ft.

1 SIGNAGE PROGRAM PLAN

1"=10'-0"

RE:

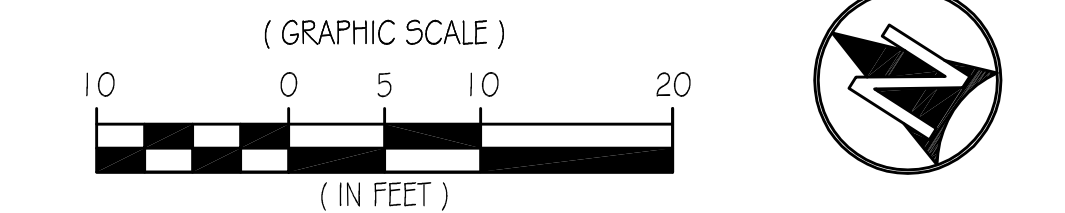


EXHIBIT A



SAFEWAY™

STAMP

REVISION SCHEDULE

DELTA	NUMBER	DATE
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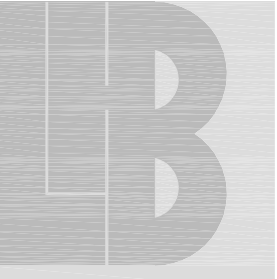
BASED ON CRITERIA MASTER
ISSUED: 03/25/11

SUBMITAL DATES

OWNER:
SAFEWAY

BUILDING DEPT:

O.T.B.:



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PROJECT NO.
11-10-1746

DRAWN BY:
JRB

CHECKED BY:
JRB

SAFEWAY #1746

ACTIVITY ID. 25-1746-000-0001
10605 FOLSOM BOULEVARD
RANCHO CORDOVA, CA 95670

SHEET TITLE
PRELIMINARY
SIGNAGE
PROGRAM

SHEET N°
SGI 236

11/02/12 11:44 AM

Conditions of Approval

		<u>Timing/ Implementation</u>	<u>Enforcement/ Monitoring</u>	<u>Verification (date & Signature)</u>
1.	The new fueling center is approved for a eight (8) multi-product fueling dispensers under a 6,615 square foot canopy, along with a 700 square foot convenience store. No alcoholic beverages are allowed to be sold from the convenience store. Station hours of operation will be limited to 5 AM to 11 PM of the same day, Monday through Sunday.	ON-GOING	PLANNING	
2.	In the event of a legal challenge, this permit shall be withheld pending the outcome of the legal process.	ON-GOING	PLANNING	
3.	This action does not relieve the applicant of the obligation to comply with all ordinances, statutes, regulations, and procedures.	ON-GOING	PLANNING	
4.	Applicant shall hold harmless the City, its Council Members, officers, agents, employees, and representatives from liability for any award, damages, costs and fees incurred by the City and/or awarded to any plaintiff in an action challenging the validity of this permit or any environmental or other documentation related to approval of this permit. Applicant further agrees to provide a defense for the City in any such action.	ON-GOING	PLANNING	
5.	Applicant shall not carry a negative account balance with the City for the processing of the project. If a negative account balance occurs, it will be the developer's responsibility to pay the balance due, in order to avoid delays in the processing of future permits or recordation of maps. Please email the Finance Department at billings@cityoffranchocordova.org for the status of your account with the City.	ON-GOING	FINANCE	
6.	Applicant shall be responsible for all damage to City streets associated with construction of the project and shall repair any damage as soon as possible.	ON-GOING	Public Works	

Conditions of Approval

	Prior to Issuance of Improvement Plans or Building Permits			
7.	Applicant shall complete improvement plans to the satisfaction of the Public Works Department. Improvement plans shall include, but shall not be limited to: • All onsite civil improvements. • Civil plan shall include an ADA access plan • All facilities, including but not limited to, sidewalk, driveways, etc. shall be upgraded to meet current ADA requirements and City Standards. Sidewalk on entire property frontage does not conform to ADA guidelines. Remove and replace all sidewalks per City Standard on Barbera Way frontage and install new 35 foot type A Driveway. All sidewalks on Folsom Boulevard Frontage shall be removed and replaced and the Driveway shall be replaced with type A Driveway. Any obstructions to the sidewalk shall be relocated behind back of walk. • Broken curb and gutter shall be removed and replaced. • Utility laterals • Public improvement plans shall clearly delineate all transitions to existing improvements. All improvements to be designed and constructed to the satisfaction of the Public Works Department.	PRIOR TO APPROVAL OF IMPROVEMENT PLANS	PUBLIC WORKS	
8.	Enter into a frontage agreement and bond for construction of public improvements and erosion control measures per the approved Public Works plans to the satisfaction of the Public Works Department. Number, size, and location of driveways are subject to approval by the Public Works Department.	PRIOR TO APPROVAL OF IMPROVEMENT PLANS	PUBLIC WORKS	
9.	Applicant shall submit landscaping plans demonstrating conformance with the Water Use and Conservation provisions.	PRIOR TO APPROVAL OF IMPROVEMENT	PUBLIC WORKS	

Conditions of Approval

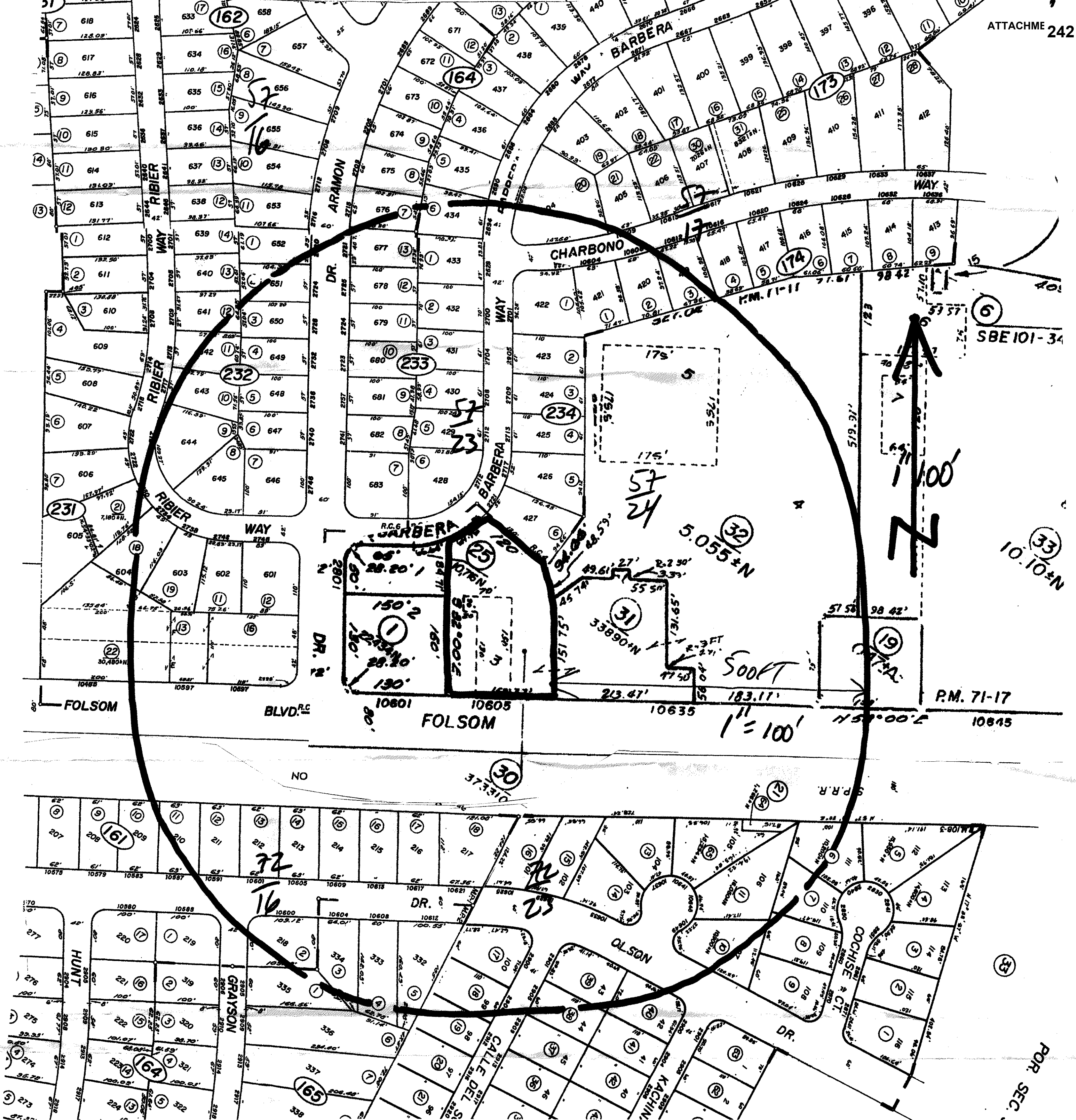
		PLANS		
10.	Applicant shall photo-document the condition of adjacent streets, sidewalks and infrastructure to the satisfaction of the Public Works Department.	PRIOR TO APPROVAL OF IMPROVEMENT PLANS	PUBLIC WORKS	
11.	On-site source control measures shall be required for this project in accordance with the latest version of the <i>Stormwater Quality Design Manual for the Sacramento & South Placer Region</i> ¹ , Chapter 4, Table FA-1 on page FA-2, "Design Requirements for Fueling Areas to Protect Water Quality".	PRIOR TO APPROVAL OF IMPROVEMENT PLANS	PUBLIC WORKS	
12.	If the total area of the developed or redeveloped impervious surfaces (building rooftop, flat work, and parking areas) equals or exceeds 1.0 acres, incorporate into the site improvement plans permanent stormwater quality treatment measures in conformance with applicable County ordinances & standards, and state and federal law.	PRIOR TO APPROVAL OF IMPROVEMENT PLANS	PUBLIC WORKS	
13.	Applicant shall verify with the City's Finance Department that their account is in good standing. If any balance is due, it shall be paid in full prior to Building Permit Review. For account status, please email the Finance Department at billings@cityofranchocordova.org for the status of your account with the City.	PRIOR TO BUILDING PERMIT ISSUANCE	FINANCE	
14.	Rancho Cordova Police Department shall review and approve the security lighting plan for the site. Additionally, RCPD recommends installing a security peep hole in the rear entry door.	PRIOR TO BUILDING PERMIT ISSUANCE	PLANNING	
15.	The Planning Department shall review and approve the construction plans in accordance with the approved plans that include the site plan, elevations, and final landscape plan. A 6 foot masonry wall shall be required along the northern property line, adjacent to the residential zoned property. Particular review of the landscape installation along Folsom Blvd, as to choice of materials and screening height, so as to not block site visibility for egress vehicles	PRIOR TO BUILDING PERMIT ISSUANCE	PLANNING	

Conditions of Approval

	from the site. Substantial changes to the plans may require the City Council approval.			
16.	Property Owner/Applicant shall participate in a funding mechanism for maintenance services for the fair share of existing and all new public improvements associated with the project including but not limited to streets, bridges/culverts, traffic signals, traffic signs, striping and legends, ITS operations, and street lights. This may be accomplished through annexation to the City Road Maintenance Community Facilities District. All costs associated with the annexation shall be borne by the Property Owner/Applicant. Contact: Elizabeth Sparkman at (916) 851-8714 as there may be a 2-3 month lead time to satisfy this condition.	PRIOR TO BUILDING PERMIT ISSUANCE	PUBLIC WORKS	
17.	Developing this property may require the payment of supplemental sewer impact fees (one time connection fees). If applicable, the impact fees shall be paid to Sacramento Area Sewer District.	PRIOR TO BUILDING PERMIT ISSUANCE	PUBLIC WORKS	
	Prior to Final Inspection or Occupancy			
18.	Applicant shall verify with the City's Finance Department that their account is in good standing. If any balance is due, it shall be paid in full prior to Final Occupancy. For account status, please email the Finance Department at billings@cityofranchocordova.org for the status of your account with the City.	PRIOR TO OCCUPANCY	FINANCE	
19.	The Planning Department shall inspect the project to ensure it has been built in substantial conformance with the approved Design Review plans.	PRIOR TO OCCUPANCY	PLANNING	
20.	Connection to the District's sewer system shall be required to the satisfaction of the District. District Design Standards apply to all sewer construction for all new buildings.	PRIOR TO OCCUPANCY	PUBLIC WORKS	

Conditions of Approval

21.	As-Built reproducible grading and improvement plans, as well as a compact disc containing said plans in AutoCAD and pdf format, shall be submitted and approved by the Public Works Department.	PRIOR TO OCCUPANCY	PUBLIC WORKS	
22.	Designer shall certify that installed landscaping conforms to City water conserving landscape requirements.	PRIOR TO OCCUPANCY	PUBLIC WORKS	
23.	Applicant shall be responsible for all damage to City streets associated with construction of the project and shall repair any damage as soon as possible.	PRIOR TO OCCUPANCY	PUBLIC WORKS	
24.	Install public improvements per the approved Public Works plans and to the satisfaction of the Public Works Department.	PRIOR TO OCCUPANCY	PUBLIC WORKS	



057-0240-030-0000
TRESTLE CORDOVA II LLC
419 WAVERLEY ST
PALO ALTO CA 94301

057-0164-005-0000
CARL W & JOY L YOUNG
2690 BARBERA WAY
RANCHO CORDOVA CA 95670

057-0164-006-0000
DOMINIQUE & DOMINIQUE YANEZ
2694 BARBERA WAY
RANCHO CORDOVA CA 95670

057-0164-007-0000
BARBARA M PRICE
8934 MADISON AVE
FAIR OAKS CA 95628

057-0164-007-0000
OCCUPANT
2715 ARAMON DR
RANCHO CORDOVA CA 95670

057-0164-008-0000
TRUST B GAGLIARDI FAMILY TRUST
1663 YALE DR
MOUNTAIN VIEW CA 94040

057-0164-008-0000
OCCUPANT
2709 ARAMON DR
RANCHO CORDOVA CA 95670

057-0173-020-0000
CECELIA LYNCH
2693 BARBERA WAY
RANCHO CORDOVA CA 95670

057-0173-021-0000
LIVIOUS & AURELIA ANA
5121 ARROYO ST
FAIR OAKS CA 95628

057-0173-021-0000
OCCUPANT
10609 CHARBONO WAY
RANCHO CORDOVA CA 95670

057-0174-001-0000
RONALD B & GRACIELA PHIPPS
10604 CHARBONO WAY
RANCHO CORDOVA CA 95670

057-0174-002-0000
RONALD B & GRACIELA PHIPPS
10608 CHARBONO WAY
RANCHO CORDOVA CA 95670

057-0174-003-0000
IVAN VERSTIVSKIY
10612 CHARBONO WAY
RANCHO CORDOVA CA 95670

057-0174-004-0000
CHRISTEL J & ROBERT K STAUB
10616 CHARBONO WAY
GOLD RIVER CA 95670

057-0231-006-0000
ANA VILLEGAS
2722 RIBIER WAY
RANCHO CORDOVA CA 95670

057-0231-007-0000
WA CHAN
2720 BARBERA WAY
RANCHO CORDOVA CA 95670

057-0231-011-0000
SACTO METRO FIRE DIST
2101 HURLEY WAY
SACRAMENTO CA 95825

057-0231-011-0000
OCCUPANT
2742 RIBIER WAY
RANCHO CORDOVA CA 95670

057-0231-012-0000
SACRAMENTO METROPOLITAN FIRE
DIST
2101 HURLEY WAY
SACRAMENTO CA 95825

057-0231-012-0000
OCCUPANT
2746 RIBIER WAY
RANCHO CORDOVA CA 95670

057-0231-013-0000
SACTO METROPOLITAN FIRE DIST
2101 HURLEY WAY
SACRAMENTO CA 95825

057-0231-013-0000
OCCUPANT
10597 FOLSOM BLVD
RANCHO CORDOVA CA 95670

057-0231-016-0000
JEANETTE D ORSI TRUST
AGREEMENT 2006
15150 EL CAMINO SENDA
SARATOGA CA 95070

057-0231-016-0000
OCCUPANT
10599 FOLSOM BLVD
RANCHO CORDOVA CA 95670

057-0231-016-0000
OCCUPANT
10597 FOLSOM BLVD
RANCHO CORDOVA CA 95670

057-0231-018-0000
SACRAMENTO METROPOLITAN FIRE
DISTRICT
2101 HURLEY WAY
SACRAMENTO CA 95825

057-0231-018-0000
OCCUPANT
2734 RIBIER WAY
RANCHO CORDOVA CA 95670

057-0231-019-0000
SACTO METRO FIRE DIST
2101 HURLEY WAY
SACRAMENTO CA 95825

057-0231-019-0000
OCCUPANT
2738 RIBIER WAY
RANCHO CORDOVA CA 95670

057-0231-021-0000
SACRAMENTO METROPOLITAN FIRE
DISTRICT
2101 HURLEY WAY
SACRAMENTO CA 95825

057-0231-021-0000
OCCUPANT
2730 RIBIER WAY
RANCHO CORDOVA CA 95670

057-0231-022-0000
SACRAMENTO METROPOLITAN FIRE
DISTRICT
2101 HURLEY WAY
SACRAMENTO CA 95825

057-0231-022-0000
OCCUPANT
10595 FOLSOM BLVD
RANCHO CORDOVA CA 95670

057-0232-001-0000
CHA SOON MCPHERSON
2720 ARAMON DR
RANCHO CORDOVA CA 95670

057-0232-002-0000
LOREEN R DAVIS
2724 ARAMON DR
RANCHO CORDOVA CA 95670

057-0232-003-0000
LUCY K HILDEBRAND
2728 ARAMON DR
RANCHO CORDOVA CA 95670

057-0232-004-0000
FEDERAL NATL MTG ASSOCIATION
14221 DALLAS PKWY #100
DALLAS TX 75254

057-0232-004-0000
OCCUPANT
2732 ARAMON DR
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057-0232-005-0000
BRICE JUAREZ
1443 S SHELTON ST
SANTA ANA CA 92707

057-0232-005-0000
OCCUPANT
2736 ARAMON DR
RANCHO CORDOVA CA 95670

057-0232-006-0000
GLADYS CARILLO
2740 ARAMON DR
RANCHO CORDOVA CA 95670

057-0232-007-0000
JAMES LEROY MOLZAHN
2746 ARAMON DR
RANCHO CORDOVA CA 95670

057-0232-008-0000
MELODY A LAMBSON
260 CURTISS CT
GALT CA 95632

057-0232-008-0000
OCCUPANT
2737 RIBIER WAY
RANCHO CORDOVA CA 95670

057-0232-009-0000
KAREN F PARROFF
7901 LOCKE RD
VACAVILLE CA 95688

057-0232-009-0000
OCCUPANT
2725 RIBIER WAY
RANCHO CORDOVA CA 95670

057-0232-010-0000
SHARON MCCARTHY
2717 RIBIER WAY
RANCHO CORDOVA CA 95670

057-0232-011-0000
PATRICIA & THOMAS A MAHONY
2713 RIBIER WAY
RANCHO CORDOVA CA 95670

057-0232-012-0000
LIBORIO MORALES
2709 RIBIER WAY
GOLD RIVER CA 95670

057-0232-013-0000
RIBIER WY TRUST
PO BOX 72802
DAVIS CA 95617

057-0232-013-0000
OCCUPANT
2705 RIBIER WAY
RANCHO CORDOVA CA 95670

057-0233-001-0000
ROGER JAMES & BARBARA A
TOMPKINS
4521 MARBLE WAY
CARMICHAEL CA 95608

057-0233-001-0000
OCCUPANT
2698 BARBERA WAY
RANCHO CORDOVA CA 95670

057-0233-002-0000
LINDA L BROWN
2700 BARBERA WAY
GOLD RIVER CA 95670

057-0233-003-0000
BILLY LAVELL & OMER A L JOHNSON
2704 BARBERA WAY
RANCHO CORDOVA CA 95670

057-0233-004-0000
DAVID A & ZELDA L TROUTMAN
2708 BARBERA WAY
RANCHO CORDOVA CA 95670

057-0233-005-0000
KENNETH L & JANET A HAINES
2712 BARBERA WAY
RANCHO CORDOVA CA 95670

057-0233-006-0000
AN THIEN HUYNH
2720 BARBERA WAY
RANCHO CORDOVA CA 95670

057-0233-007-0000
MANUEL & LAURA J APARICIO
2747 ARAMON DR
RANCHO CORDOVA CA 95670

057-0233-008-0000
MARY ANN
2741 ARAMON DR
RANCHO CORDOVA CA 95670

057-0233-009-0000
CESAR M VACA
2526 FURMINT WAY
RANCHO CORDOVA CA 95670

057-0233-009-0000
OCCUPANT
2737 ARAMON DR
RANCHO CORDOVA CA 95670

057-0233-010-0000
JANIS R FALCY REVOCABLE TRUST
2733 ARAMON DR
RANCHO CORDOVA CA 95670

057-0233-011-0000
LAUREN N TAYLOR
2729 ARAMON DR
RANCHO CORDOVA CA 95670

057-0233-012-0000
VIRGINIA L DECORTE
2725 ARAMON DR
RANCHO CORDOVA CA 95670

057-0233-013-0000
CATHY G PETREE
6320 MCKEON PONDEROSA WAY
FORESTHILL CA 95631

057-0234-001-0000
ROSIE D GALSTELUM
2701 BARBERA WAY
RANCHO CORDOVA CA 95670

057-0234-002-0000
TERRY C & DEBRA L PHILLIPS
2705 BARBERA WAY
RANCHO CORDOVA CA 95670

057-0234-003-0000
BARBARA PRICE
PO BOX 627
FAIR OAKS CA 95628

057-0234-003-0000
OCCUPANT
2709 BARBERA WAY
RANCHO CORDOVA CA 95670

057-0234-004-0000
ROBERT L PRICE
PO BOX 779
SHINGLE SPRING CA 95682

057-0234-004-0000
OCCUPANT
2713 BARBERA WAY
RANCHO CORDOVA CA 95670

057-0234-005-0000
ROBERT L PRICE
3976 BLACK OAK DR
SHINGLE SPGS CA 95682

057-0234-005-0000
OCCUPANT
2717 BARBERA WAY
RANCHO CORDOVA CA 95670

057-0234-006-0000
BARBARA M PRICE
PO BOX 627
FAIR OAKS CA 95628

057-0234-006-0000
OCCUPANT
2721 BARBERA WAY
RANCHO CORDOVA CA 95670

057-0240-001-0000
GOODMAN FAMILY TRUST
1241 LOMA VISTA
BEVERLY HILLS CA 90210

057-0240-001-0000
OCCUPANT
10601 FOLSOM BLVD
RANCHO CORDOVA CA 95670

057-0240-019-0000
TRESTLE CORDOVA II LLC
419 WAVERLEY ST
PALO ALTO CA 94301

057-0240-019-0000
OCCUPANT
10641 FOLSOM BLVD
RANCHO CORDOVA CA 95670

057-0240-025-0000
D & A DETOX CENTER INC
9978 FOLSOM BLVD
SACRAMENTO CA 95827

057-0240-025-0000
OCCUPANT
2801 ARAMON DR
RANCHO CORDOVA CA 95670

057-0240-031-0000
TRESTLE CORDOVA II LLC
419 WAVERLEY ST
PALO ALTO CA 94301

057-0240-031-0000
OCCUPANT
10607 FOLSOM BLVD
RANCHO CORDOVA CA 95670

057-0240-032-0000
TRESTLE CORDOVA LLC
7423 WINDING WAY
FAIR OAKS CA 95628

057-0240-032-0000
OCCUPANT
10635 FOLSOM BLVD
RANCHO CORDOVA CA 95670

057-0240-033-0000
PROPS INCORPORATED AJM
PO BOX 8050
BENTONVILLE AR 72712

057-0240-033-0000
OCCUPANT
10600 FOLSOM BLVD
RANCHO CORDOVA CA 95670

072-0161-010-0000
PAULA GRIDER
10583 OLSON DR
RANCHO CORDOVA CA 95670

072-0161-011-0000
CHERYL SAVAGE
11873 POINT ROCK WAY
GOLD RIVER CA 95670

072-0161-011-0000
OCCUPANT
10587 OLSON DR
RANCHO CORDOVA CA 95670

072-0161-012-0000
WERNER FAMILY LIVING TRUST
10591 OLSON DR
RANCHO CORDOVA CA 95670

072-0161-013-0000
JOHN C & GERALDINE J HANNAHS
10601 OLSON DR
RANCHO CORDOVA CA 95670

072-0161-014-0000
WILLIAM A CASILLAS
10605 OLSON DR
RANCHO CORDOVA CA 95670

072-0161-015-0000
D J & JANET M SEKANY TRUST
6241 FERNWOOD DR
SHINGLE SPRING CA 95682

072-0161-015-0000
OCCUPANT
10609 OLSON DR
RANCHO CORDOVA CA 95670

072-0161-016-0000
VICKI A PFINGST TRUST
2521 GARDEN HWY
SACRAMENTO CA 95833

072-0161-016-0000
OCCUPANT
10613 OLSON DR
RANCHO CORDOVA CA 95670

072-0161-017-0000
NICK L ABAIGAR
10617 OLSON DR
RANCHO CORDOVA CA 95670

072-0161-018-0000
VICKI A PFINGST TRUST
2521 GARDEN HWY
SACRAMENTO CA 95833

072-0161-018-0000
OCCUPANT
10621 OLSON DR
RANCHO CORDOVA CA 95670

072-0164-001-0000
GEVORG MNATSAKANYAN
10588 OLSON DR
RANCHO CORDOVA CA 95670

072-0165-001-0000
GALINA IURCO
2905 GRAYSON WAY
RANCHO CORDOVA CA 95670

072-0165-002-0000
MARGIE HAYNES
10600 OLSON DR
RANCHO CORDOVA CA 95670

072-0165-003-0000
LEONID UDODIK
10604 OLSON DR
RANCHO CORDOVA CA 95670

072-0165-004-0000
DONALD C & TERESA M WENIG
4990 SCREECH OWL CRK RD
EL DORADO HILL CA 95762

072-0165-004-0000
OCCUPANT
10608 OLSON DR
RANCHO CORDOVA CA 95670

072-0165-005-0000
THOMAS EUGENE VANDEVER
10612 OLSON DR
RANCHO CORDOVA CA 95670

072-0210-070-0000
TRANSPORTATION CORR JOINT
POWERS AUTHO SAC-PLCRVLE
PO BOX 2110
SACRAMENTO CA 95812

072-0320-006-0000
MILLER DAVID
2489 HIGHLAND HILLS DR
EL DORADO HILL CA 95762

072-0320-006-0000
OCCUPANT
2840 COCHISE CT
GOLD RIVER CA 95670

072-0320-006-0000
OCCUPANT
2842 COCHISE CT
GOLD RIVER CA 95670

072-0320-007-0000
SARAH J FARRELLY REVOCABLE
LIVING TRUST
2850 COCHISE CT
RANCHO CORDOVA CA 95670

072-0320-007-0000
2852 COCHISE CT
RANCHO CORDOVA CA 95670

072-0320-008-0000
ALEXANDRIA M CONNER
3229 HORNBY ISLAND ST
WEST SACRAMENT CA 95691

072-0320-008-0000
OCCUPANT
2860 COCHISE CT
RANCHO CORDOVA CA 95670

072-0320-008-0000
OCCUPANT
2862 COCHISE CT
RANCHO CORDOVA CA 95670

072-0320-010-0000
RITCHHART REVOCABLE TRUST
3074 VISTA LEFONTI
EL DORADO HILL CA 95762

072-0320-010-0000
OCCUPANT
10649 OLSON DR
RANCHO CORDOVA CA 95670

072-0320-010-0000
OCCUPANT
10651 OLSON DR
RANCHO CORDOVA CA 95670

072-0320-011-0000
KAISER HENRY D & ANN M
2804 WOOD CT
ALBUQUERQUE NM 87112

072-0320-011-0000
OCCUPANT
10645 OLSON DR
RANCHO CORDOVA CA 95670

072-0320-011-0000
OCCUPANT
10647 OLSON DR
RANCHO CORDOVA CA 95670

072-0320-013-0000
DENNIS CHARLES BEELER
MCDANIEL
154 LOMBARD ST #45
SAN FRANCISCO CA 94111

072-0320-013-0000
OCCUPANT
10637 OLSON DR
RANCHO CORDOVA CA 95670

072-0320-013-0000
OCCUPANT
10639 OLSON DR
RANCHO CORDOVA CA 95670

072-0320-014-0000
LINDA A KING
1932 FLOWERS ST
SACRAMENTO CA 95825

072-0320-014-0000
OCCUPANT
10633 OLSON DR
RANCHO CORDOVA CA 95670

072-0320-014-0000
OCCUPANT
10635 OLSON DR
RANCHO CORDOVA CA 95670

072-0320-015-0000
MARIA ARACELI
10629 OLSON DR
RANCHO CORDOVA CA 95670

072-0320-015-0000
OCCUPANT
10631 OLSON DR
RANCHO CORDOVA CA 95670

072-0320-016-0000
BYPASS TRUST
337 N WINDSOR BLVD
LOS ANGELES CA 90004

072-0320-016-0000
OCCUPANT
10625 OLSON DR
RANCHO CORDOVA CA 95670

072-0320-016-0000
OCCUPANT
10627 OLSON DR
RANCHO CORDOVA CA 95670

072-0320-017-0000
LOUIS E & DONNA R HAMPTON
103 YANKTON ST
FOLSOM CA 95630

072-0320-017-0000
OCCUPANT
2900 CALLE DEL SOL WAY
RANCHO CORDOVA CA 95670

072-0320-018-0000
GLENN E & WILDA H RICKARD
TRUST
10857 ALANDALE WAY
RANCHO CORDOVA CA 95670

072-0320-018-0000
OCCUPANT
2908 CALLE DEL SOL WAY
RANCHO CORDOVA CA 95670

072-0320-019-0000
GENEVA PUTMAN
2912 CALLE DEL SOL WAY
RANCHO CORDOVA CA 95670

072-0320-037-0000
GARY & WYRENE DAVIS
2909 CALLE DEL SOL WAY
RANCHO CORDOVA CA 95670

072-0320-038-0000
BRIAN S & SAVANNAH M REINALDO
2905 CALLE DEL SOL WAY
RANCHO CORDOVA CA 95670

072-0320-039-0000
GERALD & PAMELA AIKEN
2901 CALLE DEL SOL WAY
RANCHO CORDOVA CA 95670

072-0320-040-0000
THU T TON
2900 KACHINA WAY
RANCHO CORDOVA CA 95670

072-0320-041-0000
MGER ISMAILYAN
2904 KACHINA WAY
RANCHO CORDOVA CA 95670

072-0320-064-0000
SACRAMENTO REGIONAL TRANSIT
DIST
PO BOX 2110
SACRAMENTO CA 95812

072-0320-065-0000
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SAN FRANCISCO CA 94111

072-0320-065-0000
OCCUPANT
10641 OLSON DR
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OCCUPANT
10643 OLSON DR
RANCHO CORDOVA CA 95670

MEMORANDUM



DATE: December 17, 2012

TO: Honorable Mayor and Council Members

FROM: Reed Flory and Jessica Hayes, Housing Services Division,
Phil Nichols, Neighborhood Services Division

**SUBJECT: ELECTION TO WITHDRAW FROM THE HUMAN RIGHTS AND FAIR
HOUSING COMMISSION AND AUTHORIZING STAFF TO FULFILL
ANY CURRENT FINANCIAL OBLIGATIONS TO THE COMMISSION**

RECOMMENDATION

Adopt Resolution No. 116-2012 electing to withdraw from the Human Rights and Fair Housing Commission and authorizing staff to fulfill any current financial obligations to the Commission.

RESULT OF RECOMMENDED ACTION

The City will withdraw from the Human Rights and Fair Housing Commission consistent with the process described in the JPA Agreement. Staff will continue to develop a program to Affirmatively Further Fair Housing as required to participate in the Federal Community Development Block Grant (CDBG) program.

ADVANCES GOALS: 1, 2, and 5.

BACKGROUND

Earlier this year, the United States Department of Housing and Urban Development advised the City of a conflict between continuing service on the Commission and the receipt by the City of certain important Community Development Block Grant (CDBG) revenues from the federal government. Additionally, in April of this year, HUD informed all CDBG participants, in this area, of updates in requirements to "affirmatively further fair housing" choices in HUD funded programs. Jurisdictions were asked to re-examine their ability to certify to the sufficiency of actions, including actions taken by third parties, in data gathering, performance tracking, and developing strategies responding to the HUD mandated Analysis of Impediments (AI) study. As a result of this combination of issues, City staff has identified an alternative way to provide the services currently provided to the City by the Regional Human Rights and Fair Housing Commission (the "Commission"). By this resolution the City would withdraw from the Commission consistent with the process identified in the JPA agreement. Staff would then continue to develop and administer a replacement Fair Housing program.

Assessing our Responsibilities, Performance and Alternatives

In April of this year, with the adoption of the current year's CDBG Action Plan, staff requested that the Council not continue to fund participation in the Commission. Instead, Council agreed to allow staff to investigate alternate ways to satisfy our Fair Housing obligations, document our performance and satisfy HUD expectations. During this interim period, there was concern that Rancho Cordova citizen calls for assistance and complaints have a place to land. Fortunately, a combination of resources available to the City permitted both continuity of response and provided the groundwork for a new program. Extensive discussion within the Housing and Neighborhood Services Division revealed that our citizen's complaints rarely reached Fair Housing violation stage. Instead complaints usually revolved around tenant landlord disputes and frequently included life situations such as near homelessness, loss of income and special needs. The City already has in place a contract with Sacramento Self Help for response to just these Tenant Landlord issues. Additionally, Phillip Nichols, Code Enforcement Officer within the Neighborhood Services Division demonstrated interest in and aptitude for acting as the clearing house and case manager for all citizen contacts. Phil also organized and participated in a three day training course in the law and application of Fair Housing principles. Staff suggests that the core of an excellent alternative program exists in the City and that current funding from CDBG is more than adequate to maintain the effort HUD mandates.

The Fair Housing Tenant/Landlord Mediation Program Concept

Given the "hands on" experience of the last 8 months, the discussions with other jurisdictions and the Fair Housing training experience, staff is proceeding with the development of a program (See detail in Attachment 1) which includes the following major components:

- Analysis of Impediments Evaluation
- Fair Housing Education and Outreach
- Annual Analysis of Fair Housing Discrimination
- Case Management (Enforcement)

The program will be vetted with HUD and refined to satisfy Fair Housing requirements and local conditions. Staff will detail our experience with the program as we present the 2013 – '14 CDBG Action program.

ATTACHMENTS

1. Resolution No. 116-2012
2. Proposed Fair Housing and Tenant Landlord Mediation Program Concept

ATTACHMENT 1**CITY OF RANCHO CORDOVA**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA
 APPROVING AND ADOPTING RESOLUTION NO. 116-2012 ELECTING TO WITHDRAW
 FROM THE REGIONAL HUMAN RIGHTS/FAIR HOUSING COMMISSION AND
 AUTHORIZING STAFF TO FULFILL ANY CURRENT FINANCIAL OBLIGATIONS TO THE
 COMMISSION**

WHEREAS, on January 22, 2008 the City of Rancho Cordova entered into a Joint Exercise of Powers Agreement creating the Regional Human Rights Fair Housing Commission; and

WHEREAS, the City of Rancho Cordova now wishes to develop an alternative Human Rights and Tenant Landlord Mediation program.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA:

1. That the City of Rancho Cordova does hereby Elect to Withdraw from the Human Rights and Fair Housing Commission, and
2. That the City of Rancho Cordova Authorizes Staff to Fulfill any Current Financial Obligations to the Commission.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the ____ day of _____, 2012 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

 Linda Budge, Mayor

ATTEST:

 Mindy Cuppy, CMC, City Clerk

Rancho Cordova Fair Housing Tenant Landlord Mediation Concept Plan

As an extension of current joint venture efforts regarding CDBG program oversight, the Plan may involve the consideration of a Fair Housing Services Joint Powers Agreement with Citrus Heights and Elk Grove

- **Leverage Analysis, Reporting, and Testing**
 - Analysis of Impediments to Fair Housing
 - Annual Housing Discrimination Testing
 - Shared Consolidated Planning for Fair Housing Enforcement
 - Shared HUD Housing Discrimination Reporting
 - Shared Fair Housing Plans (standardized procedures)
- **Leverage Documentation and Case Management Tools**
 - Shared Case Management System (online case tracking)
 - Shared Report Formats (standardize for interchangeability)
- **Leverage Education and Outreach Efforts**
 - Shared Curriculums
 - Multi-jurisdictional Fair Housing Law Education Opportunities
 - Training for City Employees and Officials
 - Training for Apartment Managers/Landlords/Tenants

Fair Housing Plan Outline

- I. Analysis of Impediments Evaluation**
 - a. Identify Priority Impediments
 - i. Plan Policy Resolutions
 - ii. Plan Action Resolutions
 - b. Identify Secondary Impediments
 - i. Plan Policy Resolutions
 - ii. Plan Action Resolutions
 - c. Annual Evaluation of Results
 - i. Results of Policies
 1. Effective? Measurable?
 - ii. Results of Actions
 1. Effective? Measurable?
- II. Education and Outreach**
 - a. Rental Housing Seminars
 - i. Tenant Rights and Obligations
 - ii. Landlord Rights and Obligations

ATTACHMENT 2

- b. Fair Housing Law
 - i. Violations
 - ii. Remedies (filing claims, legal representation)
 - iii. Ramifications

III. Annual Analysis of Fair Housing Discrimination

- a. Sample Testing
 - i. Annual
 - ii. Tests for different protected categories
 - iii. Shared tests with Citrus Heights and Elk Grove
 - iv. Provide Education and Outreach that coordinates with testing
- b. Analyze results and amend strategies as required.

IV. Case Management (Enforcement)

- a. Tenant Landlord Mediation Cases
 - i. Case Intake (standardized forms)
 - ii. Referrals to Sacramento Self-Help (SSH) (or other third-party mediator)
 - iii. Case follow-up
 - iv. Quarterly reports on all Mediation cases provided to City
 - 1. City record keeping of Mediations
 - 2. Report to HUD on an annual basis
- b. Fair Housing Discrimination Cases
 - i. Case Intake (standardized forms)
 - 1. Referral to State of California Department of Fair Employment and Housing
 - 2. Referral to Federal Fair Housing Act Claims
 - ii. Record keeping on all State and Federal case referrals
 - iii. Annual report to HUD
- c. Case Tracking
 - i. Online Case Management
 - 1. JPA shared costs for proprietary online system
 - 2. Standardized reporting
 - 3. HUD approved formats
 - ii. Case Resolution and Follow-up
 - 1. Mediation
 - a. Follow-up
 - b. Resolution
 - c. Closure
 - 2. Referral to State or Federal Claims
 - a. Closure
 - iii. Case Reporting
 - 1. CDBG Annual Reporting to HUD

