

ORDINANCE NO. 013-03

**AN ORDINANCE GRANTING A FRANCHISE FOR THE COLLECTION OF SOLID WASTE,
RECYCLABLE MATERIALS,
GREEN WASTE AND FOOD WASTE AND STREET SWEEPING**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS
FOLLOWS:**

SECTION I. FINDINGS

A. The City Council, in granting this franchise, exercises its authority pursuant to the Charter of the City of Stockton, Article XXI. To the extent it is applicable, Public Resources Code section 40059 and any other provision of state law applicable, further provides for the granting of this franchise.

B. The entity to which this franchise is granted has agreed to provide the enhanced levels of service to the community, including an improved waste diversion program, an expanded recycling program, increased frequency of green waste collection, initiation of a food waste collection service, and improved street sweeping schedules for certain residential and commercial locations.

C. The City of Stockton requested proposals from several entities within the market of solid waste collection and related services, including the entity to which this franchise is granted. The parties have negotiated an agreement entitled "Collection Service Agreement for Solid Waste, Recyclable Materials, and Green Waste and Food Waste Services," a true and correct copy of which is on file in the office of the City Clerk, and which is incorporated in its entirety by this reference ("Agreement"). The parties have acted in their capacities as participants in the market for such services and it is this basis upon which the franchise is granted.

**SECTION II. GRANT OF FRANCHISE; RESCISSION OF EXISTING
FRANCHISE**

A. Ordinance No. 038-93, enacted on December 13, 1993, is hereby rescinded.

B. The City Council of the City of Stockton hereby grants to USA Waste of California, Inc., doing business as Stockton Scavengers Association ("Franchisee"), an exclusive franchise to collect those certain solid wastes and other materials, within the City of Stockton as specified in the Agreement.



SECTION III LENGTH OF TERM OF FRANCHISE

The term shall be an initial fifteen (15) years, commencing on June 1, 2004, and ending on May 31, 2019. The term may be extended, under conditions stated in the Agreement, for an additional five (5) years.

SECTION IV TERMS AND CONDITIONS OF FRANCHISE

A. In addition to the terms contained in this ordinance, the terms and conditions of the granting of this franchise are contained in detail in the Agreement referenced in Section I.C, above, the entirety of which has been incorporated into this ordinance by reference.

B. The following topics are addressed in detail within the Agreement. These descriptions are intended only to summarize, by way of example and not as a limitation, the terms of the Agreement:

1. Article 1 Definitions, establishes the definition of the capitalized terms as used in the Agreement.
2. Article 2 Representations and Warranties, sets forth those representations and warranties of both the Franchisee and the City regarding the basis on which the parties relied in negotiation, and a partial waiver of any rights of the Franchisee in other permits and under other provisions of law.
3. Article 3 Collection Services Agreement, describes the term of the Agreement, conditions under which the term may be extended, the general scope and extent and exclusions of the services to be provided; establishes a contractor fee and an AB 939 fee, the requirements regarding diversion, and conditions precedent to effectiveness of the Agreement.
4. Article 4 Scope of Services, sets forth in detail the services Franchisee shall provide and the users to which services shall be provided, generally including street sweeping, seasonal leaf collection, neighborhood cleanups, on-call bulky items pick up, use of low emission vehicles, and services to City of Stockton facilities.
5. Article 5 Other Collection Services, requires the provision of public education programs, establishes standards for customer accessibility and complaint resolution, general operating and reporting requirements, addresses hazardous waste issues and changes in scope of services.
6. Article 6 Billing, Collection, and Remittance, allocates the responsibilities for such activities and audits of same.
7. Article 7 Contractor Compensation and Customer Rates, contains terms related to establishing and adjusting rates and compensation to the Franchisee.
8. Article 8 Record Keeping, Reporting, and Performance Reviews, requires certain reporting and record keeping.
9. Article 9 Indemnity, Insurance, Bond, states the requirement for insurance coverage, provision of security for the Franchisee's performance, and the indemnity and defense provisions.
10. Article 10 Breach, Default, and Termination, establishes events of breach or default, liquidated damages for certain performance deficiencies, cure periods, notice provisions, and remedies.
11. Article 11 Other Agreements of the Parties, includes provisions concerning independent contractor status, compliance with laws, assignment rights and

procedures, dispute resolution, subcontracting, transition to another contractor, notice requirements, and defense clauses.

12. Article 12 Miscellaneous Agreements, contains provisions related to interpretation, execution, venue, and incorporates all the exhibits as integral parts of the Agreement.

Exhibits include the following: Exhibit A—Scope of Services; Exhibit B—Standards of Performance; Exhibit C—Collection Services Area; Exhibit D—Diversion Plan; Exhibit E—Public Education Plan; Exhibit F—City Buildings to be Serviced by Contractor; Exhibit G—City Special Events Serviced by Contractor; Exhibit H—Street Sweeping and Seasonal Leaf Collection; Exhibit I—Schedule of Rates; Exhibit J—Liquidated Damages; Exhibit K—Instrument for Securing Performance; Exhibit L—Insurance Certificates; Exhibit M—Implementation and Customer Service Plan; Exhibit N—Cooperation Agreement; and Exhibit O—Parent Company Guarantee.

SECTION V. EXERCISE OF GOVERNMENT POWERS; NO IMPAIRMENT OF CITY'S AUTHORITY TO EXERCISE EMINENT DOMAIN POWERS

A. Pursuant to section 2105 of the Charter of the City of Stockton, the granting of this franchise shall in no way or to no extent impair, limit or affect the rights of the City of Stockton, as now existing or hereafter conferred, to acquire the property of the Franchisee by purchase or through the exercise of the City's power of eminent domain.

B. The granting of rights under this ordinance is subject to the provisions of Article XXI of the Charter.

SECTION VI. ACCEPTANCE OF FRANCHISE

Pursuant to section 2104 of the Charter, within ten (10) days after the final passage of this ordinance or extension thereof, the Franchisee shall file with the City Clerk, a written acceptance of the grant of this franchise.

SECTION VII. RATES

The rates the Franchisee receives for performance of the services specified in the Agreement shall be set by action of the City Council according to the applicable processes and procedures for doing so.

SECTION VIII. INTERPRETATION

This Ordinance, the Agreement, and all rights granted thereby, shall be interpreted as a negotiated, bilateral agreement between the parties, drafted with the assistance of legal counsel for all parties. The Agreement shall be treated and administered in the same fashion consistent with the nature of any bilateral agreement. The Agreement shall be interpreted under the laws of the State of California and the Charter and ordinances of the City of Stockton. The terms "shall" and "will" in this ordinance and the Agreement shall be interpreted as mandatory and the term "may" as permissive or directory.

SECTION IX. EXECUTION OF AGREEMENT; MINOR AMENDMENTS TO THE AGREEMENT

The City Manager of the City of Stockton is hereby authorized to execute the Agreement on behalf of the City of Stockton. The City Manager is further authorized to agree to minor amendments or modifications of the Agreement. Such modifications shall be of a non-substantive nature and shall be for the purpose of conforming the Agreement to express the intention of the parties and to implementing the intent of the City Council in granting this franchise.

SECTION X. SEVERABILITY.

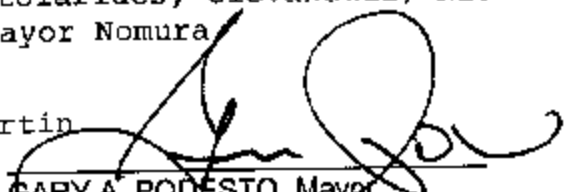
In the event any section or other portion of this ordinance shall be determined invalid or unconstitutional by a court of competent jurisdiction, such section or portion shall be deemed as separate, distinct, independent and severable and all other sections or portions shall remain in full force and effect.

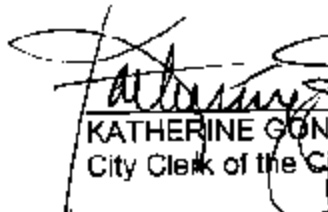

SECTION XI. EFFECTIVE DATE.

This ordinance shall be effective June 1, 2004.

ADOPTED: April 29, 2003.

VOTE: Ayes 5 Councilmembers Bestolarides, Giovanetti, Nickerson,
Ruhstaller, Vice Mayor Nomura
Nays 1 Mayor Podesto
Absent 1 Councilmember Martin


GARY A. PODESTO, Mayor
of the City of Stockton


KATHERINE GONG MOSEN
City Clerk of the City of Stockton


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